TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 222.

STANDARD STOCK FOOD COMPANY, APPELLANT,

vs.

[illegible] WRIGHT, AS STATE FOOD AND DAIRY COMMISSIONER OF IOWA.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF IOWA.

FILED MARCH 1, 1912.

(22,053.)

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INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., DECEMBER 30, 1911.

a STANDARD STOCK FOOD COMPANY, Complainant,
against
H. R. WRIGHT, as State Food & Dairy Commissioner, Defendant.

b Pleas in the Circuit Court of the United States, Southern District of Iowa, Central Division, at a Term Thereof Begun and Holden in the City of Des Moines, Iowa, on the Third Tuesday of November, the Same Being the 16th Day of November, A. D. 1909, Before the Honorable Smith McPherson, One of the Judges of said Court.

1 In the Circuit Court of the United States for the Southern District of Iowa, Central Division.

To the Honorable the Judges of the Circuit Court of the United States for the Southern District of Iowa, Central Division:

Standard Stock Food Company, a corporation, of Omaha, Nebraska, and a resident and citizen of said State, bring- this its Bill, against H. R. Wright as State Food and Dairy Commissioner of the State of Iowa, a resident of Des Moines, in Iowa, and a citizen of said State, and thereupon your orator complains and says:

1. That your orator is a corporation organized under the laws of the State of Nebraska, with its principal place of business in Omaha in said State, and it is a citizen of said State. And that the defendant H. R. Wright is a resident and citizen of the State of Iowa, residing in the city of Des Moines, and that the matter herein in controversy exceeds in value the sum of $2000.00 exclusive of interest and costs.

2. That your orator is now and has been for a number of years past engaged in the business of making and selling condimental stock food under a copy-right trade name of Standard Stock Food, and said condimental stock food while not a strict food, possesses condimental and tonic properties and powers which aid animals in the digestion of food; That said preparation or compound thus prepared and sold by your orator has for its base or diluent linseed oil meal and the germs of corn, in which is mixed in certain proportions under a secret formula such condiments as anise, coriander,
2 caraway and fenugreek seeds—such tonics as gentian root, yellow dock,—such stimulants as ginger root, capsicum pods, and such ingredients with the base being combined with sulphur, bicarbonate of soda, salt, charcoal and other wholesome ingredients, but containing nothing of a deleterious or poisonous nature of any kind whatsoever, and the said formula together with the proportions in which said products are mixed together, and the percentage of each, constitute the trade secret of your orator and is worth exceeding the sum of $50,000.00. That the said formula and trade secret was purchased by your orator some several years ago at a large sum and the said formula or trade secret has been carefully preserved by your orator as the basis of its business, and under the formula and trade secret thus acquired and used, the said condimental stock

food has been made and largely sold by your orator throughout Nebraska, Iowa and other states and territories of the United States, wherein the business has been builded in said preparation in the State of Iowa, in an amount exceeding the sum of $40,000.00 per year. That the secret formula is unknown to other dealers in condimental stock foods and the customers of your orator and the public in general, and in exploiting its said goods for the past twenty years, your orator has expended large sums of money in an amount exceeding $250,000.00 whereby the public in general throughout Nebraska, Iowa and the United States have become familiar with the value of said formula and the mixture composed of the same, whereby your orator has been enabled to sell in the State of Iowa during the past year and for a number of years preceding, a quantity of its goods in the amount of exceeding $40,000.00 per annum. That its said preparation contains no injurious or deleterious or poisonous ingredients of any kind or character, but the same is entirely wholesome, and is sold by your orator as possessing condimental tonic and digestive properties which enables stock, when fed with the said preparation or formula in connection with other foods, to assimilate the said food more readily and to sharpen the appetite of the animal, whereby the quantity of food consumed by the animal is increased and the same is better assimilated through the use of the said preparation of your orator under its said formula in connection with other feeding stuffs fed to animals.

3 3. That your orator in the management of its said business sells said condimental stock food both to dealers and consumers in Nebraska, Iowa and elsewhere, and that in connection it sells to more than eight hundred dealers in the State of Iowa besides a very large number of customers who buy direct from your orator or through its agents.

4. That the defendant herein is the State Food and Dairy Commissioner and that under the recent enactment of the Iowa Legislature of a law concerning condimental stock food, which became effective July 4th 1907, the said defendant as such State Food and Dairy Commissioner was enjoined with the duty of enforcing the provisions of said Act. That among other provisions of said Act, there is imposed upon every manufacturer, importer, dealer or agent, of any condimental medicinal proprietary or trade marked stock or poultry food, or both, the command to pay to the State Food and Dairy Commissioner on or before the 15th day of July of each year, a license fee of $100.00 in lieu of a purported inspection fee of ten cents per ton upon concentrated feeding stuffs sold or offered for sale in the State of Iowa and that the said Commissioner has threatened, and unless restrained by order and injunction of this Court, will attempt to enforce the payment of said purported license fee of $100.00 either from your orator herein or from each of the eight hundred dealers in said State who purchase its products and from the agents of your orator herein, or on their failure to so pay said license fee, will visit upon them the penalties imposed by said Act, whereby your orator, the said dealers and agents who purchase the goods of your orator in said State will refuse to purchase the same whereby the business of your orator in the State of Iowa will be

damaged to an extent far beyond $2000.00 per year, for the reason that a large volume of the business of your orator in the State of Iowa is direct with dealers in said State who purchase its said condimental stock food and then sell the same to customers thereof throughout the State, and in consequence the said Dealers will refuse to purchase said goods of your orator if compelled to pay a license tax upon the goods of your orator in the sum of
4 $100.00 thus attempted to be imposed by the Act of the Legislature of Iowa respecting condimental stock foods, whereby the business of your orator will be destroyed or damaged to an extent exceeding the sum of $2000.00 per year. And in that regard, your orator states that such provision incorporated in the enactments of the legislature of Iowa respecting condimental stock food whereby a license fee of $100.00 is imposed upon each manufacturer, importer, dealer or agent for any condimental, medicinal proprietary or trade marked stock or poultry food is a tax upon the business of your orator and in violation of the constitution of the United States, and that although the said imposition of the said license fee of $100.00 by the said act is imposed as in lieu of the inspection fee of ten cents per ton, yet the same is not needed for inspection purposes, nor in fact is there any requirements in the statute of Iowa that the food stuffs of your orator be inspected by the said State Food and Dairy Commissioner or any other person prior to the time of their being offered for sale, but that the said license fee is a tax upon the business of your orator, and the proceeds thereof under the enactment are to go in to the State Treasury.

Amendment to Paragraph Four: That the manufacture- of foodstuffs who are required to pay the license fee of one hundred dollars under Section 5 of the Act of 1907, involved in this suit, are almost entirely non-residents of the State of Iowa with their places of business outside of said State, and more than nine-tenths of such food products sold within the State of Iowa are interstate commerce, said products being shipped from other states into the State of Iowa.

And your complainant further states that the products of this claimant involved in this action are prepared in the State of Nebraska in sealed packages varying from five to one hundred pounds in weight, and the same are shipped into the State of Iowa in said original packages and are sold in that State in such packages either direct to the consumer by agents of this claimant, or by dealers in said State.

5 5. That besides your orator, there are many manufacturers of stock foods selling their condimental stock and poultry foods in the State of Iowa, but under different formulæ than that of your orator herein, and the dealers handling the goods of your orator and other sellers of condimental stock and poultry foods, aggregate several thousand, and your orator states that there is discrimination in said law in that while the same attempts to cover agricultural seeds as well, that there is no license fee or inspection fee required with respect to agricultural seeds, and further that the inspection fee of ten cents per ton is not to apply to any barley, wheat, rye and buckwheat brans, nor wheat, rye and buckwheat middlings, nor to wheat, rye and buckwheat shorts, manufactured in the

State of Iowa, whereas a discrimination is made between such products manufactured in the State and such products imported into the State but manufactured outside thereof, and further that the costs and burden of the inspection of agricultural seeds is thus made to be paid out of the license fee exacted from your orator and others dealing and selling condimental stock and poultry foods, and your orator further states that upon the payment of the said $100.00 license fee, tags are to be furnished by said Food and Dairy Commissioner to be placed upon each package sold or offered for sale in the State of Iowa, but your orator states that the only purpose for which said tags are required is that they shall contain information only that the said tax has been paid, no inspection being required of the products of your orator or others before the same are offered for sale, or sold in said State whereby your orator states that the provisions of said section 5 of said Act insofar as they relate to the business of your orator, or dealers who purchase its goods, and its agents within the State of Iowa, in compelling your orator, or its dealers or agents to pay said license fee of $100.00 are concerned, that it is unconstitutional and void.

6. Your orator further states that with respect to its products, and Section 2 of the said Act referring to condimental stock foods, there is a provision as follows: "The name and percentage of the diluent or diluents, or bases, shall be plainly states on the outside
6 of the package or container". And respecting the said provision your orator states that if the same is enforced and required of your orator, it will compel your orator to disclose its trade secret or formula to its rivals in business and to its customers, for that the percentage of the diluent or diluents or bases is of the essence of the secret of your orator in its said formula. That the value of its formula consists of a proper mixture of the ingredients composing the same with the diluent or base in proper proportions thereof, and that your orator has been many years in experimenting upon the proper mixture of said ingredients and the proper percentage or base upon which to derive the best results from its said formula, and if it is now compelled to name the percentage of the diluent or diluents or bases upon the outside of the package or container, in which its food preparation is packed, that the secret formula of your orator will thus be revealed to its rivals in business, and to the public generally, whereby the business of your orator will be destroyed, and for that reason it refuses and has refused, while complying with all the other requirements of the laws of Iowa respecting its food products, excepting the payment of $100.00 license fee, to comply with the provisions of Sec. 2. That your orator, prior to the commencement of this suit has taken the matter up with the defendant herein as the State Food and Dairy Commissioner, but that the said Commissioner has insisted upon the package or container of your orator's products shipped into the State of Iowa that the same shall contain the percentage of the diluents or base thereof, and has threatened that he will insist upon an exact and literal compliance therewith, or else will cause your orator, his agents and dealers, to be subject to the penalties of said Act for violation of its provisions.

7. And your orator further states that the said provision of said Section 2 of said Act of the Iowa Legislature is in violation of the laws of the United States with respect to the products of your orator, for that the laws of the United States permit the goods of your orator to be sold in States other than Nebraska under the terms and provisions of the laws thereof, and the said Acts of Congress
7 specifically exempt proprietors or manufacturers of proprietary food stuffs which contain no unwholesome added ingredients from disclosing their trade formulæ, wherefore your orator states that the said Act of the Iowa Legislature insofar as it attempts to compel your orator to disclose its trade secret and to set forth on the package or container in which its condimental stock food is packed and offered for sale in the State of Iowa, the percentage of the diluent or base, is unconstitutional and void as being in violation of Section 8, Article 1 and Article 14 of the Constitution of the United States, and your orator further states that with the exception of the matters specifically set forth herein, it has complied with each and every requirement of the Acts of Congress and the Laws of Iowa in shipping its goods into the States of Iowa and offering them for sale therein, either direct to the consumers or through dealers who purchase of your orator and its agents.

Wherefore and in consequence whereof, and for as much as your orator is remediless in the premises at and by the strict rules of the common law and are only relievable in a court of equity where matters of this kind are cognizable and reviewable, and to the end that your orator may have that relief to which it is entitled, and that the said defendant may answer the premises, but not under oath or affirmation, the benefit whereof is expressly waived by your orator, it now prays that it may please your Honors to grant to your orator a writ of injunction pendente lite issuing out of and in accordance with the rules and practices of this Honorable Court to be directed to the said defendant, to restrain the said H. R. Wright as such Food and Dairy Commissioner of the State of Iowa, his successors in office, from proceeding further to enforce the provisions of said laws of Iowa which are herein declared to be unconstitutional and void as against your orator, its agents, and the dealers in Iowa who purchase its goods, in selling the same or offering the same for sale, and from attempting to enforce the penalties of said Act for violation of the alleged parts thereof which are hereby declared to be unconstitutional and void, namely: The payment of the $100.00 license fee, and to state the percentage of the diluent or base upon the outside of the package or container, and from interfering with your
8 orator, its agents and the dealers who purchase its goods and offer them for sale, in any way, for failure to observe the said provisions of the Iowa law, and that at the final hearing of said cause, said injunction may be made perpetual, and that your orator have such further and other relief in the premises as the nature and the circumstances of the case may require.

And your orator further prays that it may please your Honors to grant unto your orator not only the writ of injunction conformable to the prayer of this bill, but also a writ of subpœna issued out of and under the seal of this Honorable Court directed to the said

defendant H. R. Wright, as State Food and Dairy Commissioner, commanding him to appear and answer this Bill of Complaint on a day certain to be fixed by this Court, and to do and to receive stand by and perform such decree and orders in the cause as to your honors shall deem meet.

(Sgd.) E. G. McGELTON,
(Sgd.) F. H. GAINES,
Solicitors for Complainant Herein.

(Sgd.) A. L. HAGER.
(Sgd.) CHAS. L. POWELL.

STATE OF NEBRASKA,
County of Douglas, ss:

F. E. Sanborn upon oath deposes and says that he is the President of the Standard Stock Food Company, which is a corporation organized under the laws of the state of Nebraska, and the complainant named in the foregoing Bill; that he has carefully read the foregoing complaint and knows the contents thereof and the facts stated are true.

(Sgd.) F. E. SANBORN.

Subscribed to in my presence and sworn to before me this 5th day of July 1907.

[SEAL.] (Sgd.) FRANCES J. GIBB,
Notary Public.

Endorsed: In the Circuit Court of the United States for the Southern District of Iowa Central Division. Standard Stock Food Company of Omaha Nebraska, Complainant, vs. H. R. Wright as State Food and Dairy Commissioner, Defendant. Bill of Complaint. Filed July 8th 1907. E. R. Mason, Clerk, McGilton and Gaines, Attorneys for Complainant.

That on the same day to-wit there issued out of said Clerk's office a Subpœna in Chancery which said Subpœna in Chancery
9 with the return of the Marshal thereon is in words and figures following to-wit:

UNITED STATES OF AMERICA,
Central Division, Southern District of Iowa:

The President of the United States to H. R. Wright as State Food and Dairy Commissioner:

We command you, and each of you, that you appear before the Judge of the Circuit Court of the United States for the Southern District of Iowa, at Des Moines on the First Monday of August it being the 5th day of August next, A. D. 1907 to answer to the bill of complaint of Standard Stock Food Company this day filed in the office of the Clerk of said Court and then and there to receive and abide by such judgment and decree as shall then and thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the said Southern District of Iowa: Returnable to the August Rule Day it being Monday the 5th day of August A. D. 1907.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, at the City of Des Moines Iowa, this the 8th day of July, A. D. 1907 and of the Independence of the United States the 132.

(Sgd.) [SEAL.] EDWARD R. MASON,
Clerk U. S. Circuit Court, Southern Dist. of Iowa,
(Sgd.) By ROMA WOODS, *Deputy.*

Memorandum. The within named defendant is notified that unless he enter his appearance in the Clerks office of said Court at Des Moines aforesaid, on or before the day to which the above writ is returnable, as above stated, the complaint will be taken against him as confessed, and a decree entered thereon accordingly.

(Sgd.) [SEAL.] EDWARD R. MASON,
Clerk U. S. Cir. Court, Southern Dist. of Iowa,
(Sgd.) By ROMA WOODS, *Deputy.*

Endorsed with Marshal's Return.

This writ came into my hands for service on the 9th day of
10 July 1907 and I served the same on the within names persons as follows, to-wit:

On H. R. Wright on the 9th day of July 1907 by delivering to him a true copy of this writ at Des Moines, Iowa.

(Sgd.) FRANK B. CLARK,
U. S. Marshal,
(Sgd.) By GEO. E. BIDWELL,
F. Deputy.

Marshal's Fees.

Mileage 2 miles at .06—12 cents.
Service on one at 2.00—$2.00.

Also Endorsed.

Subpœna in Chancery Circuit Court of the United States, Southern District of Iowa. Central Division. Standard Stock Food Company vs. H. R. Wright, as State Food & Dairy Commissioner. Returnable to Rule Day first Monday in August A. D. 1909. E. R. Mason, Clerk. Filed Aug. 17, A. D. 1907. Edward R. Mason, Clerk, by Roma Woods, Deputy. E. G. McGilton & F. H. Gaines, Comp't's Sol. Residence Omaha, Hager and Powell, Des Moines.

That afterwards to-wit on the 5th day of August A. D. 1907 the defendant filed a Demurrer to said Bill which said Demurrer is in words and figures following to-wit:

In the Circuit Court of the United States for the Southern District of Iowa, Central Division.

In Equity.

STANDARD STOCK FOOD COMPANY, a Corporation of Omaha, Nebraska, Complainant,

vs.

H. R. WRIGHT, as State Food and Dairy Commissioner of the State of Iowa, a Resident and Citizen of said State, Defendant.

Demurrer of the Above-named Defendant, H. R. Wright, as State Food and Dairy Commissioner of the State of Iowa, to the Bill of Complaint Above Named.

This defendant by protestation, not confessing nor acknowledging all or any of the matters or things contained in the bill of the above named complainant to be true as therein alleged, demurs to said bill of complaint, and as grounds therefor respectfully shows to this court—

11 First. That it appears from the complainant's own showing by said bill that it is not entitled to the relief prayed in said bill against this defendant, for the reasons as follows:

Second. That it affirmatively appears by said bill that the complainant herein is engaged in the business of making and selling condimental stock food, which food, it is claimed by said complainant possesses medicinal and nutritive qualities. That according to the provisions of Section 2 of Chapter 189, acts of the thirty-second general assembly, the complainant is required only to show on each parcel or package of such stock food the name and percentage of the diluent or diluents or bases, and the name and percentage of such ingredient or ingredients as are deleterious or poisonous. That the act in question was passed by the legislature in the exercise of its police power to prevent fraud, deception and adulteration, to protect the health and promote the welfare of the live stock of the state, and safeguard the rights and interest of the citizens thereof.

Third. That it is not necessary for the complainant herein to disclose his formula for the reason that all that is required of complainant is the name and percentage of the diluents or bases, unless the ingredients thereof should be deleterious or poisonous. That according to section 6 of said act, the State Food and Dairy Commissioner is required to make analyses of all concentrated commercial feeding stuffs, which include the stock food of the complainant herein. That it affirmatively appears by said bill and by the allegations thereof that the provisions of chapter 189, acts of the thirty-second general assembly, are laws of a general nature and have a uniform operation, and that the same are not in violation of section 8 article 1 and article 14 of the Constitution of the United States, for the reason that the taxes imposed is simply an inspection tax reasonable in amount and is not a tax on the business of complainant nor an interference with interstate commerce. That it affirmatively

appears in the allegations of the bill of complaint that only such food stuffs are included within the provisions of the act as
12 are likely to be adulterated and misbranded and cause injury to property and the citizens of the state of Iowa.

Fourth. It further affirmatively appears by said bill that this court has no jurisdiction to hear and determine the questions presented by said bill, or to grant the relief asked therein, and this defendant objects and demurs to the jurisdiction of this court upon the following grounds:

That the amount in controversy herein is less than Two Thousand ($2000.00) Dollars, exclusive of interest and costs, as shown by said bill; that while complainant in his said bill, reiterates that he will be damaged in excess of Two Thousand ($2000.00) Dollars, exclusive of interest and costs if he refuses to pay the inspection fee of One Hundred ($100.00) Dollars as required by the acts of the Thirty-second General Assembly of Iowa, yet it affirmatively appears by said bill and the allegations thereof that the aforesaid damage may be averted and that complainant will not suffer said damage or any part thereof, if he pays the said inspection fee of One Hundred ($100.00) Dollars; that for the reason above stated the amount in controversy in this action as shown by said bill, is less that the sum of Two Thousand ($2000.00) Dollars, exclusive of interest and costs, and in fact is only the sum of One Hundred ($100.00) Dollars per year which is to be paid to the said defendant as an inspection fee.

Wherefore and for divers other good and sufficient causes appearing in said bill, this defendant demurs and prays the judgment of this court whether he shall be compelled to make any further or other answer to said bill and prays to be hence dismissed with his costs.

(Sgd.) H. W. Byers,
Attorney General, State of Iowa,
Solicitor for Defendant.

13 I, H. W. Byers, counsel for the defendant herein, do hereby certify that the foregoing demurrer to the aforesaid bill of complaint is, in my judgment, well founded in law.

(Sgd.) H. W. BYERS.

STATE OF IOWA,
Polk County, ss:

I, H. R. Wright, first being duly sworn, depose and say that I am the defendant in the above entitled cause; and that the foregoing demurrer is interposed in good faith and not for the purpose of delay.

(Sgd.) [SEAL.] H. R. WRIGHT,
As Food and Dairy Commissioner.

Subscribed and sworn to before me and in my presence this 3rd day of August A. D. 1907.

(Sgd.) C. A. LYON,
Notary Public.

Endorsed: Circuit Court of United States. Southern District. Central Division. Standard Stock Food Company vs. H. R. Wright, State Food and Dairy Com. Demurrer. Filed August 5, 1907. E. R. Mason, Clerk.

14 That afterwards to-wit on the 30th day of November A. D. 1907 the said Demurrer was submitted to the said Court for consideration thereof and the Court made the following order:

In the Circuit Court of the United States, Southern District of Iowa, Central Division.

No. 2454. Equity.

STANDARD STOCK FOOD COMPANY
vs.
H. R. WRIGHT, State Food and Dairy Commissioner.

Order.

By agreement of parties the demurrer to the bill of complaint is this day taken up and presented to the Court. And the Court being fully advised in the premises sustains said demurrer, to which complainant excepts. And complainant declining and refusing to further plead, it is ordered by the Court that the said bill of complaint be, and the same is hereby, dismissed with prejudice at the costs of the plaintiff, for which execution will issue if not paid within twenty days from this date. To each and every of which complainant excepts.

Done in open court this November 30th, 1909.

(Sgd.) SMITH McPHERSON, *Judge.*

Endorsed: Filed Nov. 30, 1909. E. R. Mason, Clerk. Ent. Record "U"—p. 438.

15 That afterwards towit on the 22nd day of December 1909 there was filed in said Clerk's office the complainant's Petition for Appeal which with the Order of the Court thereon is in words and figures following to-wit:—

In the Circuit Court of the United States for the Southern District of Iowa, Central Division.

STANDARD STOCK FOOD COMPANY, Plaintiff,
vs.
H. R. WRIGHT, as State Food and Dairy Commissioner of Iowa, Defendant.

Petition for Appeal.

The above named plaintiff conceiving itself aggrieved by the decree made and entered on the 30th day of November, 1909, in the above entitled cause, does hereby appeal from said order and decree

to the Supreme Court of the United States for the reasons specified in the assignment of errors, filed herewith and prays that this appeal may be allowed, and that a transcript of the record, proceedings and papers upon which said order and decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

(Sgd.) E. G. McGELTON,
(Sgd.) F. H. GAINES,
Att'ys for Plaintiff.

Dated this 16th day of December, 1909.

The foregoing claim of appeal is hereby allowed. Dated this 20th day of December, 1909.

(Sgd.) SMITH McPHERSON, *Judge.*

Endorsed: In the Circuit Court of the United States for the Southern District of Iowa, Central Division. Standard Stock Food Company, Plaintiff, vs. H. R. Wright as State Food and Dairy Commissioner of Iowa. Defendant. Petition for Appeal. Filed Dec. 22, 1909. E. R. Mason, Clerk.

16 And on the same day to-wit December 22, 1909 there was filed in said Clerk's office the complainant's Assignment of Errors in said cause, which Assignment of Errors is in words and figures following to-wit:

In the Circuit Court of the United States for the Southern District of Iowa, Central Division.

STANDARD STOCK FOOD COMPANY, Plaintiff,
vs.
H. R. WRIGHT, as State Food and Dairy Commissioner of Iowa, Defendant.

Assignment of Errors.

The plaintiff prays an appeal from the final decree of this Court to the Supreme Court of the United States, and assigns for error:

First. The Court erred in sustaining the demurrer of defendant to plaintiff's bill, and dismissing the appeal.

Second. The Court erred in not granting the relief prayed for by plaintiff.

Third. The Act of the General Assembly of the State of Iowa concerning condimental stock food, which became effective July 4, 1907, and which requires of plaintiff the payment of a license fee of One Hundred Dollars, is in contravention of the Constitution of the United States, and especially of Section Eight of Article One, and likewise, Article Fourteen.

Fourth. The said Act of the Legislature of Iowa in so far as it requires the plaintiff and other manufacturers, dealers and agents of condimental stock foods, to set forth the name and percentage of the diluent or diluents or base of their product on the outside of the package or container, is void as in contravention of Chapter 14 of

the Constitution of the United States,—the said Act of the Legislature of Iowa having been passed by the Thirty-second Gen-
17 eral Assembly thereof, and is found in Chapter 189 of the said Acts of said Legislature.

Wherefore plaintiff prays that the decree of the said Circuit Court be reversed, and that the relief prayed for in plaintiff's bill be allowed.

(Sgd.) E. G. McGELTON AND
F. H. GAINES,
As Attorneys for Plaintiff.

Endorsed: In the Circuit Court of the United States for the Southern District of Iowa, Central Division. Standard Stock Food Company, Plaintiff vs. H. R. Wright, as State Food and Dairy Commissioner of Iowa, Defendant. Assignment of Errors. Filed Dec. 22, 1909. E. R. Mason, Clerk.

18 And afterwards, to-wit: January 15, 1910, there was filed in said Clerk's office in said Cause, a Bond on Appeal, which said Bond is in words and figures as follows, to-wit:

In the Circuit Court of the United States for the Southern District of Iowa, Central Division.

STANDARD STOCK FOOD COMPANY, Plaintiff,
vs.
H. R. WRIGHT, as State Food and Dairy Commissioner of Iowa, Defendant.

Bond.

Know all men by these presents: That we, Standard Stock Food Company, a corporation of Omaha, Nebraska, as principal, and United States Fidelity & Guaranty Company of Baltimore, Maryland, as surety, are held and firmly bound unto H. R. Wright as State Food and Dairy Commissioner of Iowa, in the full and just sum of Five Hundred Dollars to be paid to the said H. R. Wright as such State Official, his certain attorneys, executors, administrators or assigns; — payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals and dated this 7 day of January, 1910.

Whereas, lately in the Circuit Court of the United States for the Southern District of Iowa, Central Division, in a suit pending in said Court between Standard Stock Food Company as plaintiff, and the said H. R. Wright, as such state official, as defendant, a decree was rendered on the 30th day of November, 1909, against the said Standard Stock Food Company, the said Standard Stock Food Company having obtained an appeal and filed a copy thereof in the Clerk's office of said Court to reverse the decree in the aforesaid suit, and a citation directed to the said H. R. Wright, citing and admon-

ishing him to be and appear at a session of the Supreme
19 Court of the United States to be holden at the City of Washington sixty days after the is-uance of said citation.

Now, the condition of the above obligation is such that if the said Standard Stock Food Company shall prosecute its appeal to effect, and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and effect.

(Sgd.) STANDARD STOCK FOOD CO.,
By F. E. SANBORN, *Pres't.*

(Sgd.) [SEAL.] THE UNITED STATES FIDELITY & GUARANTY CO.,
By PORTERFIELD K. WITMER,
Attorney in Fact.

Approved by:
(Sgd.) SMITH McPHERSON, *Judge.*

(Endorsed:) Filed Jan. 15, 1910. E. R. Mason, Clerk.

20 In the Circuit Court of the United States for the Southern District of Iowa, Central Division.

STANDARD STOCK FOOD COMPANY, Plaintiff,
vs.
H. R. WRIGHT, as State Food and Dairy Commissioner of Iowa, Defendant.

Citation.

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to H. R. Wright, as State Food and Dairy Commissioner of Iowa, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States at the City of Washington, within 60 days from the date of this writ, pursuant to an appeal duly allowed by the Circuit Court for the Southern District of Iowa, Central Division, and filed in the Clerk's office of said Court, on or before the 21 day of December, 1909, in a cause wherein the Standard Stock Food Company was plaintiff and is appellant, and you were defendant and are appellee, to show cause, if any, why the decree rendered against the said plaintiff as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Smith McPherson, District and Circuit Judge of the United States, this 12th day of January, 1910.

SMITH McPHERSON.

Service and copy of the above citation is hereby admitted this 15 day of January, 1910.

H. W. BYERS,
Attorney General, and
GEORGE COSSON,
Special Counsel,
Attorneys for Defendant and Appellee.

21 [Endorsed:] In the Circuit Court of the United States for the Southern District of Iowa, Central Division. Standard Stock Food Company, Plaintiff, vs. H. R. Wright, as State Food and Dairy Commissioner of Iowa, Defendant. Citation. Filed Jan. 15, 1910. E. R. Mason, Clerk.

22 United States Circuit Court, Southern District of Iowa.

I, Edward R. Mason, Clerk of said Court for said District, do hereby certify that the foregoing is a full, true and complete copy of the Pleadings, Proceedings and Record Entries in the case of Standard Stock Food Company, Complainant, vs. H. R. Wright as State Food & Dairy Commissioner, Defendant, as full, true and complete as the originals of the same now remain on file and of record in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court at office in the City of Des Moines in said District, this 9 day of February, A. D. 1910.

[Seal U. S. Circuit Court, Southern District, Iowa.]

EDWARD R. MASON,
Clerk United States Circuit Court,
Southern District of Iowa.

Endorsed on cover: File No. 22,053. S. Iowa C. C. U. S. Term No. 222. Standard Stock Food Company, appellant, vs. H. R. Wright, as State Food and Dairy Commissioner of Iowa. Filed March 7th, 1910. File No. 22,053.

INDEX.

Supreme Court of the United States.

OCTOBER TERM, 1911.

NO. 222.

STANDARD STOCK FOOD COMPANY,
APPELLANT,

vs.

H. R. WRIGHT, AS STATE FOOD AND DAIRY COMMISSIONER OF IOWA,
APPELLEE.

APPELLANT'S BRIEF.

In 1907 complainant filed a bill in equity against defendant in the Circuit Court of the United States for the Southern District of Iowa, Central Division. The bill sought an injunction against defendant as State Food and Dairy Commissioner to restrain him from enforcing or attempting to enforce certain provisions of an Act of the Legislature of Iowa effective July 4, 1907, upon the ground that the provisions thereof, insofar as they affected complainant, were unconstitutional and void. The cause was heard on demurrer to the bill, which after submission was sustained, and complainant declining and refusing to further plead, the bill was dismissed with prejudice, at plaintiff's costs. A petition for appeal to the Supreme Court of the United States was allowed, assignments of error filed, bond given and citation duly issued and admitted.

The sole questions involved are the constitutionality

of the Act of the Legislature whereby complainant was required to pay a license fee of $100 as a condition of vending its products within the State, and to set forth on the package or container the percentage or percentages of the diluent or base.

The constitutional questions thus raised having been resolved by the decree against complainant, the appeal was prosecuted direct to this Court.

STATEMENT OF CASE.

The complainant, a corporation of Omaha, Nebraska, is engaged in the business of making and selling preparations or compounds, possessing condimental and tonic properties which aid animals in the digestion of food. The Legislature of Iowa enacted a law which became effective July 4, 1907, which provides with respect to the products of complainant as follows:

The package or container of such products shall have printed on the outside thereof:

First. The number of net pounds of feeding stuffs in the package.

Second. The name, brand or trade-mark under which the article is sold.

Third. The name and address of the manufacturer, importer dealer or agent.

Fourth. The place of manufacture.

Fifth. The name and percentage of any deleterious or piosonous ingredient or ingredients.

Sixth. The name and percentage of the diluent or diluents or bases.

Inasmuch as the product of complainant contains nothing deleterious or poisonous, it challenges the right

of the State to exact the sixth requirement set forth above.

The second phase of the Act which we desire to present is as follows:

"Before any manufacturer, importer, dealer or agent shall offer or expose for sale in this State any of the concentrated feeding stuffs defined in Section 3 of this Act, he shall pay to the State Food and Dairy Commissioner an inspection fee of ten cents per ton for each ton of such concentrated commercial feeding-stuffs sold or offered for sale in the State of Iowa, for use within this State; (except that every manufacturer, importer, dealer or agent for any condimental, patented, proprietary or trademarked stock or poultry foods, or both, shall pay to the State Food and Dairy Commissioner on or before the 15th day of July of each year, a license fee of one hundred dollars in lieu of such inspection fee."

The complainant chalienges the right of the State to exact the $100 license fee as the condition of selling its products within the State. The duty of enforcing the law is imposed upon the Food and Dairy Commissioner and the law contains a provision that whosoever shall violate any of the provisions of the Act shall be deemed guilty of a misdemeanor and upon conviction, shall be fined not more than $100 and costs of prosecution. All fees collected under the provisions of the Act shall be paid in to the State Treasurer.

The bill sets forth in substance the ingredients which enter into plaintiff's preparation or compound, and that the same contains nothing deleterious or of a poisonous nature; that the formula was purchased at a large sum, a number of years ago and has been carefully preserved by complainant as a basis of its business, and that it has built a large trade thereon, which in the State

of Iowa exceeds the sum of $40,000 per year; that it sells its products to more than eight hundred dealers in the State, who sell direct to the trade; that the Commissioner has threatened unless restrained by an Order of Injunction by the Court, to enforce the payment of the purported license fee of $100 from each of the eight hundred dealers in the State who purchase its products, and upon their failure to pay the said fee, that he will visit upon them the penalties imposed by the Act, whereby the dealers in the State will refuse to purchase the products of complainant, and the damage to its business will exceed Two Thousand Dollars per year.

With respect to the requirements that the name and percentage of the diluent or diluents or bases shall be plainly stated on the outside of the package, complainant sets forth that to do so would compel it to disclose its formula to rivals in business and to customers, because the percentage of the diluent or base is of the essence of the secret of the formula.

The bill further alleges that the Act of the Legislature is in violation of the laws of the United States with respect to such products, for that the Act of Congress especially exempts proprietors or manufacturers of such food stuffs which contain no unwholesome ingredients from disclosing their trade formula, and that complainant has complied with each and every requirement of the Act of Congress and of the laws of Iowa in shipping its goods into the State, except the payment of the tax above, and setting forth upon the package the percentage of the diluent or base of its products.

The questions involved by this appeal are therefore as follows:

First. The right of the State to exact the payment

of a license fee as a condition of selling articles of commerce within the State.

Second. The right of the State to require a manufacturer or dealer in proprietary foods, such as complainant offers for sale, to set forth the percentage of its ingredients where the preparation contains nothing deleterious or poisonous or unwholesome.

ASSIGNMENT OF ERRORS.

1st. The Court erred in sustaining the demurrer of defendant to plaintiff's bill, and dismissing the appeal.

2d. The Court erred in not granting the relief prayed for by plaintiff.

3d. The Act of the General Assembly of Iowa concerning condimental stock food which became effective July 4, 1907, and which required of the plaintiff the payment of a license fee of $100 is in contravention of the Constitution of the United States, and especially of Section 8 of Article I, and likewise Article 14.

4th. The said Act of the Legislature of Iowa insofar as it required the plaintiff and other manufacturers, dealers and agents of condimental stock foods to set forth the name and percentage of the diluent or diluents of bases of the products on the outside of the package or container, is in violation of the Constitution of the United States,—the said Act of the Legislature of Iowa having been passed by the 32nd General Assembly, and is found in Chapter 189 of the said Acts of the Legislature.

BRIEF AND ARGUMENT.

It will be conceded that complainant is entitled to the relief asked, unless the provisions that are assailed

in the Act of the Legislature are valid. If the State Official had no right to exact the license fee of $100 set forth in the provisions of the Act, then complainant was justified in not paying it, and an injunction should be granted against him. The law provides that where the manufacturer fails or refuses to pay the license fee of $100, then the State Commissioner shall exact the same from each dealer in the State, whereby it is plain that the business of complainant would be ruined, unless it should pay the tax. The first question involved, accordingly, is over the right of the State to exact a license fee as set forth in the Act of the Legislature.

The Requirement that the Manufacturer, Importer, Dealer or Agent shall pay the State Food Commissioner a License Fee of $100 in lieu of the Inspection Fee Taxed upon Feed Stuffs is void, because it violates the Commerce Clause of the Constitution of the United States.

The first question that naturally arises is as to the character of the fee or tax thus imposed. It will be conceded by the attorney for the State that if the tax imposed is a license fee, then the same is void because it violates the commerce clause of the Constitution but it will be urged that though called a "license fee" it is in effect an inspection fee which the State can rightfully exact under its police powers.

The Tax is imposed as a License Fee and not as an Inspection Fee.

Section 5 of the Act of the Legislature requires every manufacturer, importer, dealer or agent before

he shall sell or offer for sale in the State, any of the concentrated commercial feeding stuffs, to pay into the State Treasury $100 in lieu of the inspection fee of ten cents per ton required of dealers in commercial feeding stuffs. The section thus excepts complainant and other dealers in condimental stock food from the payment of an inspection fee, but states in effect that they shall pay a license fee of $100 in lieu thereof. The words "in lieu of" mean exactly the same as the words "in place of " or "instead of," and hence the natural construction of the language is that the State has imposed upon such dealers a license fee to take the place of an inspection fee, so that instead of the tax herein being an inspection fee, it is the very contrary, for it has been imposed to take the place of an inspection fee. Not only is such the natural construction of the language, but the imposition of a lump sum of $100 clearly characterizes the charge as a license fee instead of an inspection tax. A license fee is exacted from the individual, whereby he is required to pay a certain fixed sum for the privilege of doing certain specific things within the State or Municipality.

An inspection fee is a tariff or tax to be paid the State to cover the cost of inspection of some product by the State before it is permitted to become an article of commerce. This Supreme Court has had occasion many times to consider enactments of State Legislatures whereby a tax was imposed or attempted to be imposed upon commerce between the States. We shall cite a few only, of the many decisions of the Court.

Brown vs. Maryland, 12 Wheaton, 419 is an early and leading case upon the question involved herein. The State of Maryland enacted a Statute requiring all im-

porters of foreign goods by bale or package, and other persons selling the same by wholesale, to take out a license for which they were to pay fifty dollars. It will be observed that there was no discrimination in the enactment of Maryland as against citizens of other states, but all importers of such goods and other persons selling the same, were required to pay the license fee. Mr. Taney, who appeared for the State, urged that such fee was but a tax upon the occupation or business of importing and as no discrimination was made against citizens of other states, the same was valid. This decision is important as bearing upon two phases of the matter herein. The Maryland statute, like that of Iowa, imposed a lump sum as a license fee. Two sections of the constitution of the United States are referred to in the opinion. First: "No state shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws." Second: "Congress shall have power to regulate commerce with the several nations and among the several states, and with the Indian tribes." The Court says:

> "A duty on imports then, is not merely a duty on the act of importation, but is a duty on the thing imported. It is not taken in its literal sense, confined to a duty levied while the article is entering the country, but extends to a duty levied after it has entered the country. The succeeding words of the sentence which limit the prohibition show the extent in which it was understood. The limitation is, 'except what may be absolutely necessary for executing its inspection laws.' "

Unless, therefore, the tax imposed against complainant herein is one absolutely necessary for executing its inspection laws and to cover the cost thereof, it

is void under the commerce clause of the constitution.

In *Robbins vs. Shelby County,* 120 U. S., 489, the Tennessee statute provides that all drummers and all persons not having a regular licensed house of business in the taxing district offering for sale or selling goods, wares and merchandise therein by sample, should be required to pay the County Treasurer the sum of ten dollars per week. Robbins was an employee of a firm in Cincinnati. In holding the Tennessee statute void, the Court said:

> "When goods are sent from one State to another for sale, or, in consequence of a sale, they become part of its general property, and amendable to its laws; provided that no discrimination be made against them as goods from another State, and that they be not taxed by reason of being brought from another State, but only taxed in the usual way as other goods are. But to tax the sale of such goods, or the offer to sell them, before they are brought into the State, is a very different thing, and seems to us clearly a tax on interstate commerce itself.
>
> It is strongly urged, as if it were a material point in the case, that no discrimination is made between domestic and foreign drummers—those of Tennessee and those of other States; that all are taxed alike. But that does not meet the difficulty. Interstate commerce cannot be taxed at all, even though the same amount of tax should be paid on domestic commerce, or that which is carried on solely within the State."

The point of the decision as we understand it, is that to require a manufacturer or importer of goods into a State to pay a tax before he has the right to sell his products within the State, is a tax on interstate commerce, and such legislative enactment of a State is void.

The Iowa Statute reads:

> "*Before* any manufacturer, importer, dealer, etc., shall offer or expose for sale his products herein, he shall pay a license fee of $100."

The products of complainant are recognized articles of commerce. The State does not and could not prohibit their importation into the State. There is no provision or restraint in the law with respect to their sale, except only that before offering its products for sale complainant must pay a tax of $100 into the State Treasury, and must comply with the requirements of the Statute in setting forth various matters on the outside of the package or container of the products.

In *Lyng vs. Michigan*, 135 U. S. 161, a tax of three hundred dollars was levied upon the business of selling brewed or malt liquors, and upon the business of manufacturing brewed or malt liquors for sale, sixty-five dollars per annum. The Court said:

> "The manufacturer of malt or brewed liquors made outside of the State of Michigan cannot introduce them into the hands of consumers or retail dealers in that State without becoming subject to this wholesale dealer's tax."

The opinion contains this language:

> "We have repeatedly held that no State has the right to lay a tax on interstate commerce in any form, whether by way of duties laid on the transportation of the subjects of that commerce or on the receipts derived from that transportation, or on the occupation or business of carrying it on, for the reason that such taxation is a burden on that commerce and amounts to a regulation of it, which belongs solely to Congress."

See also *Leisy vs. Harding*, 135 U. S., 100.
McColl vs. California, 136 U. S., 104.
Crutcher vs. Kentucky, 141 U. S., 47.
Dooley vs. U. S., 183 U. S., 151.

Wherever, therefore, the State has attempted to impose a tax upon persons engaged in interstate commerce for the privilege of selling their products within the State, such legislative enactment has invariably been declared void, because it violates the commerce clause of the Constitution. The Iowa statute specifically requires manufacturers, dealers, importers, etc., without the borders of the State, to pay into the State Treasury $100 each year before he is permitted to sell or offer for sale his products within the State. This is so clearly an attempt to levy a tax upon interstate commerce for the privilege of doing such business within the State, that no attempt will be made to sustain it, except on the assumption that such tax is an inspection fee, and therefore valid as an exercise of the police power of the State.

The License Fee of One Hundred Dollars imposed by the State is not an Inspection Fee and cannot be sustained upon that ground.

First. it is not made so by Statute. The law imposes upon each manufacturer, etc., the payment of a license fee of one hundred dollars in lieu of an inspection fee. By its very terms, therefore, it characterizes the charge as something other than an inspection fee.

Second. The requirement that the manufacturer, etc. shall pay a fixed sum before he sells his goods in the State, is a charge for the privilege of selling them, and hence is a license fee.

As an inspection tax can be exacted by the State only to cover the actual cost of inspection, it is apparent that such tax cannot be covered by a lump sum exacted

each year in advance. An inspection fee must of necessity be a tax or charge upon the thing inspected to cover the cost of such inspection.

Evidently this cannot be determined in advance by a lump sum exacted from each individual who desires to sell such products without regard to the quantity that he may sell or desire to sell within the State. The law imposes a specific charge of one hundred dollars upon each manufacturer, importer, dealer or agent who shall sell or offer for sale within the State any of the proprietary, condimental or trademarked stock or poultry foods. If he pays the tax the State has no concern over the quantity of such products that the dealer may sell. It is apparent that one dealer may have a limited business and sell comparatively few of his products within the State, yet his tax for the privilege of selling them is one hundred dollars. Such dealer likewise may manufacture but a single article of proprietary or condimental food, yet his tax before he can sell any one product within the State is one hundred dollars. Another manufacturer may sell thousands of dollars of such products within the State, yet his tax is one hundred dollars for the privilege of selling them, and instead of one he may sell any number of different kinds of proprietary or condimental foods, and his tax remains the same.

It is apparent, therefore, that the charge cannot be sustained as an inspection fee which contemplates a service with respect to each article of commerce preceding its sale and cost commensurate with such service. There is and can be no fixed relationship between the one hundred dollar tax exacted by the State, and the undertermined products which any dealer may sell within the State.

No Inspection of Complainant's Products are Required Before Sale and Hence the Tax of One Hundred Dollars Cannot be Sustained as an Inspection Fee.

The statute nowhere contemplates an inspection of complainant's products before sale, and hence the license fee cannot be sustained upon the ground that it is to cover the cost of inspection.

In *Ogden vs. Gibbons,* 9 Wheaton, 1, in considering the objects of inspection laws, Justice Marshall says:

> "The objects of inspection laws are to improve the quality of articles produced by the labor of the community; to fit them for exportation or it may be for domestic use. They act upon the subject *before* it becomes an article of foreign commerce or of commerce in the United States, and prepare it for that purpose."

In *Turner vs. Maryland,* 107 U. S. 38, the Court describes the subjects of inspection as follows:

> "Recognized elements of inspection laws have always been the quality of the article, form, capacity, dimensions and weight of packages, mode of putting up and markings and brandings of various kinds, all these matters being *supervised* by a public officer having authority to *pass* or *not* to *pass* the article as lawful merchandise, as it *did* or *did not answer* the prescribed requirements."

Without discussing the question as to whether or not the products of complainant are proper subjects for inspection because of their nature, it is apparent that none of the elements of an inspection law are contained in the statute in question whereby the imposition of this tax can be sustained. An inspection law by the State implies three things:

First. A standard fixed by the State according to which only an article of commerce may be sold therein.

Second. An inspection by some State official of such article of commerce preceding its sale to ascertain whether or not it complies with the standard.

Third. The prohibition of the sale of such article unless it first complies with the standard fixed by the State.

Where the foregoing conditions exists the State charge to cover the cost of inspection. In the present case each of the elements or essence of inspection is wanting. There is no standard fixed by the State according to which the products of complainant can be sold. There is no inspection or scrutiny of the products of complainant by a State official before their sale. There is no prohibition against their sale in any way except only for failure to pay the license fee and to state the ingredients upon the outside of the package or container as the law requires.

The State may perhaps determine whether certain products belong to commerce, or it may perhaps prescribe the conditions under which recognized articles of commerce may be sold within its borders, but the conditions do not include a right to exact a fee or license for the privilege of vending them within the State, and herein lies the difference between an inspection fee which the State has the right to exact, and a license fee which is prohibited by the Constitution. An inspection fee is exacted to cover the cost of the performance of a certain duty by State officials *preceding* the sale of the proposed article to the public and in order to ascertain whether or not it is meeting the requirements of the State in its sale. A license fee is imposed as a condition precedent to the sale of a product and for the privilege of permitting it.

We are not urging that the State has not the right

to prescribe certain conditions under which articles of commerce may be sold and to compel proposed vendors of such articles to submit the same to state officials before sale in order that the state may know that its requirements have been complied with, and that the public shall be protected in their purchase. For such labor or service the State may exact from the vendor the costs necessary to cover the inspection or scrutiny and such tax is permitted by the Constitution of the United States.

The performance of the duty and the exaction of the tax to cover the same, are therefore correlative terms. What relationship exists between the license fee of one hundred dollars imposed herein, and the performance of any duty of inspection before sale by the State officials to determine whether or not some requirement of the statute has been complied with? The only duty imposed upon the State officials respecting the articles of complainant is that at some time during the year the Commissioner or his agent shall analyze some preparation that is offered for sale or has been sold and then that he shall publish in a State bulletin the results of his analysis. This information may be valuable to the public and the analysis of the State may furnish material to punish a dealer for fraud, but these objects are exceedingly remote from the purpose and nature of an inspection. No one contends that the State can require any dealer in recognized articles of commerce to provide a tax or fund to punish some other dealer who commits a fraud in such articles in their sale, nor will it be contended that the State has power to provide a fund by tax upon commerce to enforce its police regulations.

The prohibition of the commerce clause of the Constitution is direct and positive. The State cannot tax an article of commerce except only to cover a proper inspec-

tion of such article before it becomes an article of commerce within the State.

In *Pabst Brewing Co. vs. Crenshaw,* 198 U. S., 17, the Legislature Act of Missouri was assailed which imposed a tax upon the sale of beer or other malt liquors other than those manufactured within the State. The manufacturers of such beer were required to make an affidavit setting forth the various ingredients composing the product and then the State Inspector examined the bottles and kegs and placed an inspection stamp upon the same. The majority opinion of this Court sustained the validity of the law upon the ground that it involved intoxicating liquors, which the State had the right to prohibit from importation into the State, and which as soon as they came into the State became a State product and hence were amenable to the State laws. The minority opinion is valuable in its discussion of what is necessary to constitute an inspection. Justice Brown says:

> "The object of inspection laws is to require such examination of the thing inspected as would insure to the public a safe and wholesome article. Obviously, to secure this, the inspection must be made by officers appointed for that purpose; at least, it cannot be delegated, as it virtually is in this case, to the manufacturer. The requirement of an affidavit and the acceptance of this in lieu of the actual inspection, makes the affiant who is the manufacturer, or his agent, the sole judge of the fact whether the liquors contain only the ingredients allowed by law. We cannot treat this as a bona fide inspection. To justify an inspection in law, there must be an inspection in fact."

In *Vance vs. Vandercook,* 170 U. S., 438, the Court says:

> "As the law directs that a sample of the liquor proposed to be shipped shall be sent to the state officer in advance of the shipment and as a pre-

requisite to obtaining permission to make a subsequent shipment, it is claimed in argument that this law is an inspection law passed for the purpose of guaranteeing the purity of the product to be shipped into the state for the use of a resident therein, and therefore it is but a valid manifestation of the police power of the state exerted for the purpose of inspection only. But it is obvious that this argument is unsound as the inspection of a sample sent in advance is not in the slightest degree inspection of the goods subsequently shipped into the state. The sample may be one thing and the merchandise which thereafter comes in, another. It is beyond reason to say that the law provides for an inspection of the goods shipped into the state from another state when in fact it exacts no inspection whatever."

From the foregoing cases it is apparent that the State must *perform some duty* with respect to the product, either of inspection or analysis or comparison *before* it becomes the subject of sale within the State, before it can justify any charge against the proposed vendor of such products, and it is only to cover the cost of the performance of such duty by a State official preceding the sale, that a tax or charge can be sustained. No duty of any kind is imposed upon any State official of scrutiny or inspection of the products of complainant prior to the time they become articles of commerce within the State, and hence the State cannot justify a license fee upon the ground that it is to cover the cost of the performance of some duty by a State official *after* the product has become an article of commerce within the state.

The Charge for Inspection must be Commensurate with the Cost of Inspection.

The clause of the Constitution reads:

> "No State shall without the consent of Congress lay or impose any duties on imports or exports except what shall be absolutely necessary for executing its inspection laws."

The statute requires the Food Commissioner or his agents to make an analysis during the year of the product of complainant, and then to submit the results of his analysis to the public in a bulletin published for that purpose. The Statute itself specifically shows that the cost of such analysis bears no relationship to the tax imposed, for Section 7 of the Act provides that any person purchasing any such product shall be entitled to an analysis thereof by the Commissioner upon the payment of one dollar therefor.

In every instance in which an inspection fee has been sustained, a unit charge has been made to cover the cost of an actual scrutiny or inspection of some recognized article of commerce before its sale, and in no instance has a lump sum been required in advance of a vendor of articles, and its exaction sustained upon the ground that it was an inspection fee.

The Product of Complainant is not Susceptible of Inspection.

It is apparent that not every article of commerce is susceptible of inspection. There is and can be of necessity no standard by which to measure the quality of complainant's product, and how can there be an inspection of a preparation which from its very nature cannot be inspected? To inspect—that is to determine whether

the article meets a State requirement, is to measure it by some standard, and the law fixes no such standard. True, the law requires the dealer to set forth truthfully on the outside of the package the ingredients composing his preparation, and perhaps punishes him for a misstatement. Such is no more than to punish a dealer for fraud in the sale of his products. The State, however, has not fixed any standard by which such articles are to be measured before being offered for sale, and hence there can be no such thing as an inspection fee with respect thereto, unless a State is permitted to tax commerce to provide a fund to enforce its police laws or to punish those who disobey them.

To permit this would destroy in substance the prohibition of the Constitution for there would be no limit on the taxation of commerce if the State could justify the same upon the ground that the funds were necessary to enforce its police regulations or to punish dealers for fraudulently vending their products.

The specific questions involved have been decided adversely to the contentions of the State by the Circuit Courts of the United States for the States of North Carolina and Kansas.

In *American Fertilizer Co. vs. Board of Agriculture*, 43 Fed. 609, the question involved was as to the validity of the Act of the Legislature of North Carolina which had imposed a license tax of five hundred dollars on each brand of fertilizer sold in the State, with the further proviso that the funds realized from such tax should go to the State Agricultural College. The license fee of five hundred dollars was declared void as a tax upon commerce in an opinion by Justice Seymour.

In *George H. Lee Company vs. Ed H. Webster* as

Manager and Director of the Agricultural Experiment Station of Kansas, 190, Fed., 353, the validity of an Act of the Legislature of Kansas passed in 1907, whereby the manufacturer or seller of any concentrated feeding stuff was required to pay a registration fee of fifty dollars for each brand selling for more than Forty Dollars per ton, was declared void in an opinion by Justice Pollock. The Court says:

> "There can be no question under the authorities but that the registration fee required by Section 2 of the Act, insofar as complainant is concerned, is a tax on his right to engage in the business of selling his products to his customers in this State, and is therefore unconstitutional and void."

We submit accordingly that the demand of the State of Iowa for the payment of one hundred dollars as a license fee for the privilege of doing business within the State is unconstitutional and void as a tax upon commerce.

The Requirement of the Law to set forth the Percentage of the Diluent or Base of the Product.

The enactment of the Iowa Legislature respecting concentrated stock foods requires that "the name and percentage of the diluent or diluents of bases shall be plainly stated on the outside of the package or container." The bill of complainant alleges that its preparation contains no injurious, deleterious or poisonous ingredients of any kind or character. The preparation is not an imitation of any other products, but is the result of years of experience in testing its merits. The bill alleges that the formula was purchased by complainant some years ago at a large sum, and a business has been

builded thereon of many thousands of dollars each year.

We concede the right of the State in the absence of Congressional Legislation, in the interests of public health and to protect against fraud, to require any manufacturer or seller of any compound to disclose the contents and percentage of any deleterious or poisonous ingredients. If any preparation contains such, the law requires the name and percentage of the same to be plainly stated on the outside of the package. In our view, this requirement fully protects the State, and in effect avoids the succeeding legislative enactment whereby the name and percentage of an entirely harmless product, to-wit, the base or diluent, is required to be stated on the package. If a compound or preparation contained anything deleterious or poisonous then there might be some excuse for requiring the name and percentage of the base or diluent into which such injurious ingredient enters, to be set forth; but where the compound contains nothing whatsoever that is injurious or poisonous, what public end is served by requiring the manufacturer of such a preparation to disclose his formula or trade secret?

Where products offered for sale are imitations, or possible imitations of some natural product, then we do not question the right of the State to compel the seller of such products to disclose the ingredients that it contains, and their name and percentage. By such legislation the public is protected against fraud. Where there is a recognized standard, then anything that comes short of the standard that is offered in its place, is by so much a possible deception, and hence the State has the undoubted right to require the seller of such imitation product to disclose not only what it contains, but the

amounts likewise of its respective ingredients. To require the maker, however, of any wholesome product that contains nothing injurious whatever, and is not and cannot be from its very nature, an imitation of something else, to disclose not only the ingredients but the percentages of such wholesome ingredients is to compel such manufacturer to give up the secrets of his business and such secret or formula where no fraud is perpetrated, is as much entitled to the protection of the law as the good-will of a business or an ownership in land. No State thus far, until this legislative enactment, has ever required a manufacturer of any compound that contains nothing unwholesome to disclose the percentage of its ingredients, and it is apparent that if the State possesses such power, then the value of the formula or preparation as a commercial product is destroyed and the man's business taken away from him without any compensation therefor. The act, therefore, of the Iowa Legislature is a new venture in a field which has thus far not received judicial construction.

In *Mulger vs. Kansas*, 123 U. S. 206, the Court said:

> 'It does not at all follows that every statute enacted ostensibly for the promotion of these ends, is to be accepted as a legitimate exercise of the police powers of the State. There are of necessity limitations beyond which legislation cannot rightfully go. While every presumption is to be indulged in favor of the validity of the statute the courts must obey the constitutional, rather than the law-making department of government, and must upon their own responsibility determine whether in any particular place these limitations have been passed.''

If the formula of complainant is a property right, then it is entitled to protection therein, and to require complaint to disclose his formula in the vending of his

products is to deprive him of his property without compensation therefor. If the State has the right to compel complainant in the sale of its products, to disclose the percentage or percentages of the diluent or base of the same, then it is apparent that the State has the right to compel the disclosure and percentage of each ingredient therein. To do so,i s to destroy the business of complainant, for when its formula become thus public property, it ceases to be a thing of value. The State perhaps might have the right to require complainant to disclose to some State official the ingredients and their percentages in order for the State to determine in advance whether or not such preparation should be sold within its borders, but to go further and to require of complainant that it shall disclose its formula upon the outside of the package or container is to give to the public information concerning complainant's business to which it is not entitled, and accordingly we insist that the Act of the Legislature is an unjust restriction upon commerce, and an attempt to deprive complainant of its property without due process of law.

The Act of the Iowa Legislature in above regard is contrary to and in Conflict with the Laws of United States enacted by Congress June 30, 1906.

The act of Congress specifically exempts proprietors or manufacturers of proprietary food stuffs which contain no unwholesome added ingredients from disclosing their trade formula. To require such disclosure by the State is in effect to supersede and annul the Act of Congress.

This phase of the question has been so fully and ably

set forth in the Brief of Appellant in the case of *Marion W. Savage vs. William J. Jones, Jr.,* State Chemist of the State of Indiana, submitted to this Court in January of this year, that we do not deem it necessary to further discuss the same.

Accordingly, we submit that the relief prayed for herein should have been granted and the Act of the Iowa Legislature insofar as it sought to compel complainant to pay a tax of one hundred dollars for the privilege of doing business in the State, and to set forth upon the outside of the package or container of its product the percentage or percentages of the diluent or base, is void.

Attached to this Brief is a full copy of the Act of the Iowa Legislature insofar as the products of complainant are concerned.

Respectfully submitted,

E. G. McGilton,
F. H. Gaines,
Sidney W. Smith,
A. L. Hager,
Solicitors and Counsel for Appellant.

Act of the Iowa Legislature effective July 4, 1907.

Section 1. Every lot in bulk, barrel, bag, pail, parcel or package of concentrated commercial feeding-stuffs as defined in Section Three (3) of this act; and every parcel, package or lot of agricultural seeds as defined in Section Nine (9) of this act, and containing one pound or more, offered or exposed for sale in the State of Iowa, for use within this State, shall have affixed thereto, in a conspicuous place on the outside thereof, distinctly printed in the English language, in legible type not smaller than eight-point heavy gothic caps, or plainly written, a statement certifying:

1. In case of concentrated commercial feeding-stuffs:

First. The number of net pounds of feeding-stuffs in the package.

Second. The name, brand, or trademark under which the article is sold.

Third. The name and address of the manufacturer, importer, dealer or agent.

Fourth. The place of manufacture.

Fifth. Except in the case of condimental stock food; patented, proprietary or trademarked stock and poultry foods, claimed to possess medicinal or nutritive properties, or both, the chemical analysis of the feeding-stuffs, stating the percentage of crude protein, crude fat, and crude fiber, allowing one per cent of nitrogen to equal six and twenty-five one-hundredths per cent of protein, all three constituents to be determined by the latest methods adopted by the Association of Official Agricultural Chemists of the United States.

Sec. 2. Every barrel, bag, pail, parcel or package of concentrated commercial feeding-stuffs, as defined in

Section Three (3) of this act, and every feed intended for domestic animals that is compounded from two or more substances, in addition to the requirements of Section One (1), shall have affixed thereto, in a conspicuous place on the outside thereof, a statement in the manner and form prescribed in Section One (1), giving the true and correct names of all the ingredients of which it is composed. Except condimental stock food; patented, proprietary or trademarked stock or poultry foods, claimed to possess medicinal or nutritive properties, or both; and these shall be labeled or branded so as not to deceive or mislead the purchaser in any way, and the contents of any such package shall not be substituted in whole or in part for any other contents.

"Any statement, design or device upon the label or package regarding the substances contained therein, shall be true and correct, and any claim made for the feeding, condimental, tonic or medicinal value shall not be false or misleading in any particular.

"The name and percentage of any deleterious or poisonous ingredient or ingredients shall be plainly stated upon the outside of the package or container."

"The name and percentage of the diluent or diluents, or bases, shall be plainly stated on the outside of the package or container."

Sec. 3. The term, concentrated commercial feeding-stuffs, as used in this act, shall include alfalfa meals and feeds, etc; also condimental stock food; patented, proprietary or trademarked stock or poultry feeds, claimed to possess medicinal or nutritive properties or both; and all other materials intended for feeding to domestic animals.

Sec. 4. Before any concentrated commercial feeding-stuffs, as defined in Section Three (3) of this act, is

offered or exposed for sale, the importer, manufacturer, person or party who causes it to be sold or offered for sale within the State of Iowa, for use within this State, for each and every feeding-stuff bearing a distinguishing name or trademark, shall file with the State Food and Dairy Commissioner a certified copy of the statement named in Section One (1) of this act, and shall also deposit with the said State Food and Dairy Commissioner a sealed glass jar or bottle containing not less than one pound of the feeding-stuff to be sold or offered for sale, accompanied by an affidavit that it is a fair average sample thereof and corresponds within reasonable limits to the feeding-stuff which it represents.

Sec. 5. Before any manufacturer, importer, dealer or agent shall offer or expose for sale in this State any of the concentrated commercial feeding-stuffs defined in Section Three (3) of this act, he shall pay to the State Food and Dairy Commissioner an inspection fee of ten cents per ton for each ton of such concentrated commercial feeding-stuffs sold or offered for sale in the State of Iowa, for use within this State; (except that every manufacturer, importer, dealer or agent for any condimental, patented, proprietary or trademarked stock or poultry foods, or both, shall pay to the State Food and Dairy Commissioner, on or before the fifteenth day of July of each year, a license fee of one hundred dollars ($100.00) in lieu of such inspection fee. Whenever the manufacturer or importer of such foods shall have paid the fee herein required, no other person or agent of such manufacturer or importer shall be required to pay such license fee); and shall affix to each lot shipped in bulk, and to each bag, barrel or package of such concentrated commercial feeding-stuffs, a tag, to be furnished by the said State Food and Dairy Commis-

sioner, stating that all charges specified in this section have been paid; provided, that the inspection fee herein required shall not apply to unadulterated wheat, rye and buckwheat bran, nor wheat, rye and buckwheat middlings, nor to wheat, rye and buckwheat shorts manufactured in this State. The said State Food and Dairy Commissioner is hereby empowered to prescribe the form of such tag and adopt such tag and adopt such regulations as may be necessary for the enforcement of this act. Tags for use upon concentrated commercial feeding-stuffs shall be issued in denominations suitable for use with twenty-five, fifty and one hundred pounds net, except as hereinafter provided. Provided, that any dealer who sells at one time to any other person one ton or more of concentrated commercial feeding-stuffs shall be held to have complied with the provisions of this section if he delivers to the purchaser the tax tags herein required, even though they may not be attached to the various packages.

Sec. 6. The State Food and Dairy Commissioner shall cause to be made analyses of all concentrated commercial feeding-stuffs and agricultural seeds sold or offered for sale in this State. Said State Food and Dairy Commissioner is hereby authorized, in person or by deputy, to take for analysis a sample from any lot or package of concentrated commercial feeding-stuffs in this State, not exceeding two pounds in weight; and in case of agricultural seeds, a sample not exceeding four ounces in weight; but said sample shall be drawn or taken in the presence of the party or parties in interest, or their representative, and shall be taken from a parcel, lot or number of parcels which shall not be less than five per cent of the whole lot inspected and shall be thoroughly mixed and divided into two samples and placed

in glass or metal vessels carefully sealed and a label placed on each, stating the name or brand of the feeding-stuff, agricultural seeds or material sampled, the name of the party from whose stock the sample is drawn, and the date and place of taking such sample, and said label shall be signed by the said State Food and Dairy Commissioner, or his authorized agent; or said sample may be taken in the presence of two disinterested witnesses. One of said duplicate samples shall be left on on the premise of the party whose stock was sampled and the other retained by the State Food and Dairy Commissioner, for analysis and comparison with the certified statements required by Sections One (1) and Four (4) of this act. The result of the analysis of the sample, together with additional information, shall be published from time to time in bulletins issued by the State Food and Dairy Commissioner upon approval of the Executive Council.

Sec. 7. Any person purchasing any concentrated commercial feeding-stuffs or agricultural seeds in this State, for his own use, may submit fair samples of said feeding-stuffs or seeds to the State Food and Dairy Commissioner, who, upon receipt of an analysis fee of fifty cents (50c) for each sample of agricultural seeds and one dollar for each sample of concentrated commercial feeding-stuff, shall cause an analysis of the same to be made.

Sec. 17. It is hereby made the duty of the State Food and Dairy Commissioner to enforce the provisions of this act. The inspectors, assistants and chemists appointed by the State Food and Dairy Commissioner shall perform the same duties and have the same authority under this act as are prescribed by Chapter One Hundred and Sixty-six (166), laws of the Thirty-first General As-

sembly, and the said State Food and Dairy Commissioner may appoint, with the approval of the Executive Council, such analysis and chemists as may be necessary to carry out the provisions of this act.

Sec. 18. Whoever sells, offers or exposes for sale any of the seeds specified in Sections Thirteen (13) and Fourteen (14) of this act which are mixed, adulterated or misbranded, or any agricultural seeds which do not comply with Sections Ten (10) Eleven (11) and Twelve (12) of this act, or who shall counterfeit or use a counterfeit of any of the tags prescribed by this act; or who shall prevent or attempt to prevent any inspector in the discharge of his duty from collecting samples or who shall violate any of the provisions of this act shall be guilty of a misdemeanor, and upon conviction shall be fined not more than One Hundred Dollars ($100) and costs of prosecution; provided, that no one shall be convicted for violation of the provisions of Section Ten (10) of this act if he is able to show that the weed seeds named in Section Ten (10) are present in quantities not more than one in ten thousand, and that due diligence has been used to find and remove said seeds.

Sec. 19. There is hereby appropriated, for the purpose of enforcing the provisions of this act, a sum not exceeding three thousand dollars ($3,00) annually. Such expense shall be paid by warrant of the State Auditor upon bills filed by the State Food and Dairy Commissioner with the Executive Council and approved by them. All fees collected under the provisions of this act shall be paid into the State treasury.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1911.

No. 222.

STANDARD STOCK FOOD COMPANY,
Appellant,

vs.

H. R. WRIGHT, AS STATE FOOD AND DAIRY COMMISSIONER OF IOWA,
Appellee.

APPELLEE'S BRIEF.

GEORGE COSSON, *Attorney General,*
for Appellee.

McGILTON, GAINES & SMITH, AND HAGER,
Attorneys for Appellant.

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Attorneys for Appellant.

Complainant, by bill duly filed in the circuit court of the United States, southern district of Iowa, central division, assailed the constitutionality of chapter 189, acts of the Thirty-second General Assembly, known as the con-

centrated commercial feeding stuffs act, the same now being found in sections 5077-a6 to 5077-a24, inclusive, 1907 Supplement to the Code of Iowa.

To this bill defendant duly filed its demurrer. After argument and submission, the demurrer was sustained and the complainant perfected its appeal to this court.

While the appellant under the head of Assignment of Errors assigns four different grounds, but two propositions of law are presented.

First: Is the fee prescribed by the Iowa statute a tax upon the business of complainant and a burden upon interstate commerce, or is it in effect and substance an inspection fee created for the purpose of protecting the people of the state of Iowa against fraud, imposition and adulterated stock foods and remedies?

Second: Does the law offend against the federal constitution because it requires dealers and agents of condimental stock foods to set forth the name and percentage of the diluent or diluents or bases, and the name and percentage of such ingredient or ingredients as are deleterious or poisonous?

THE PURPOSE OF THE ACT AND THE NATURE OF THE FEE.

The validity of the act must be determined not by the casual use of any word or phrase, but by its necessary and obvious result, and the purpose for which it was framed.

In the case of *Henderson vs. New York*, 92 U. S., 259, this court said that "in whatever language a statute may be framed, its purpose must be determined by its natural and reasonable effect." This doctrine was followed and reannounced in the case of *Minnesota vs. Barber*, 136 U. S., 319; and this court has so many times held that a statute is to be construed by its substantive provisions that elaboration and further citation on this point is unnecessary.

WHAT IS THE PURPOSE OF THE ACT IN QUESTION WHICH COMPLAINANT URGES OFFENDS AGAINST THE FEDERAL CONSTITUTION?

Section 29, article 3 of the constitution of the state of Iowa, provides:

"Every act shall embrace but one subject, and matters properly connected therewith; which subject shall be expressed in the title." The title of the act in question discloses the fact that it is "An act to prevent fraud in the sale of agricultural seeds, concentrated commercial feeding-stuffs and the materials from which they are manufactured, and to regulate the sale thereof, defining concentrated commercial feeding-stuffs and what shall constitute purity in various kinds of seeds; prohibiting the adulteration and providing for the correct weighing and marking of agricultural seeds and concentrated commercial feeding stuffs; and providing for the collection of samples, analyses of the same, and fixing penalties for its violation," etc., and the whole body of the act is in conformity with the title, viz.: that it is an act to prevent fraud, deception and imposition upon the public in the

sale of feeding-stuffs, including condimental stock foods and patented and proprietary remedies, and that the fee in question is a necessary incident for the purpose of making effective the general provisions of the act, and that it is in fact an inspection fee and not a tax or burden imposed upon dealers for the purpose of raising revenue or interfering with interstate commerce.

Section 1 of the act provides for the labeling of concentrated commercial feeding-stuffs, showing the number of net pounds, the brand or trade-mark under which the same is sold, the name and address of the manufacturer, importer, dealer or agent, place of manufacture, and except in case of condimental stock food, patented proprietary or trade-marked stock and poultry foods, claimed to possess medicinal or nutritive properties, or both, the chemical analysis of the feeding-stuffs, stating the percentages; Section 2 of said act provides that every package of condimental stock food, patented, proprietary or trade-marked stock or poultry foods, claimed to possess medicinal or nutritive properties, or both, shall be labeled or branded so as not to deceive or mislead the purchaser; that any design or device upon the label or package regarding the substances contained therein, shall be true and correct, and any claim made for the feeding, condimental, tonic or medicinal value, shall not be false or misleading in any particular; that the name and percentage of any deleterious or poisonous ingredient or ingredients, shall be plainly stated upon the outside of the package or container, and the name and percentage of the diluent or base shall be plainly stated on the outside of the package or container.

Section 5 provides that the state food and dairy commissioner shall furnish the necessary tags.

Section 6 provides that the state food and dairy commissioner shall cause to be made analyses of all concentrated feeding stuffs which include condimental stock foods; that the result of the analysis of the sample, together with additional information, shall be published from time to time in bulletins issued by the state food and dairy commissioner upon approval of the executive council.

Section 7 provides that any person purchasing the feeding-stuff may have analyses made upon application to the state food and dairy commissioner.

Section 17 provides that it shall be the duty of the state food and dairy commissioner to enforce the provisions of the act; that the inspector, assistants and chemists appointed by the state food and dairy commissioner shall perform the same duties and have the same authority under this act as are prescribed by chapter 166 laws of the Thirty-first General Assembly; and the said food and dairy commissioner may appoint, with the approval of the executive council, such analysts and chemists as may be necessary to carry out the provisions of the act, and section 3 of chapter 166, acts of the Thirty-first General Assembly, provides for the appointment of a chemist who shall be the official chemist and who shall devote his whole time to the duties of his office. He shall make all the examinations necessary in enforcing the provisions of the act and shall be furnished with necessary laboratory, apparatus and supplies.

Section 18 of the act provides that any one violating any of the provisions of the act shall be guilty of a misdemeanor and prescribes the punishment therefor.

Clearly all of these things are not required for the mere purpose of raising revenue or placing a burden upon the business of complainant and other dealers in commercial feeding-stuffs. There is hardly a section in the entire act which does not contain some provision looking to the protection of the public against fraud and deception in the sale of condimental, patented and proprietary stock foods and commercial feeding-stuffs. There is not a provision in the entire act which is not in entire harmony with the theory contended for by the state, viz.: that this is not an act created for the mere purpose of taxing foreign or interstate commerce or raising revenue, but that it is an act honestly and wisely passed by the state in the exercise of its police powers for the purpose of protecting its citizens against fraud, imposition and deception in the sale of adulterated and fraudulent stock foods, and the false labeling of same.

Justice Sutherland in the case of *Clintsman vs. Northrup,* 8 Cowen, 46, said that one of the objects of inspection, so far as it applied to domestic sales, was to protect the community from fraud and imposition.

Justice Blatchford, in the case of *Turner vs. Maryland,* 107 U. S., 38, said that recognized elements of inspection included quality of the article, form, capacity, dimensions, weight of package, the mode of putting up, marking and

branding of various kinds, but that it was not necessary for all these elements to co-exist in order to make a valid inspection law; that quality alone may be the subject of inspection without other requirements, or inspection may be made to extend to other matters; that because an inspection law did not include the element of quality, the court could not, therefore, say as a necessary legal conclusion that the law had ceased to be an inspection law.

In the case of *McLean vs. Denver,* 203 U. S., page 38, the only purpose or result of the act in question was to prevent or at least lessen the opportunities for the stealing of cattle. The court said:

> The law under consideration, designed to prevent the clandestine removal of property in which a large number of people of the territory are interested, seems to us an obviously rightful exercise of this power. * * * It is further urged that this is a mere revenue law and in no just sense an inspection law, and, therefore, not within the police power conferred upon the territory. It is true that inspection laws ordinarily have for their object the improvement of quality and to protect the community against fraud and imposition in the character of the article received for sale or to be exported, but in the Patapsco case, *supra,* it was directly recognized that inspection laws such as the one under consideration might be passed in the exercise of the police power, and such was the view of Mr. Justice Bradley in *Neilson vs. Garza, supra,* decided on the circuit. We see no reason why an inspection law which has for its purpose the protection of the community against fraud and the promotion of the welfare of the people cannot be passed in the exercise of the police

> power, when the legislation tends to subserve the purpose in view. In the territory of New Mexico, and other parts of the country similarly situated, it is highly essential to protect large numbers of people against criminal aggression upon this class of property. The exercise of the police power may and should have reference to the peculiar situation and needs of the community.

INSPECTION NEED NOT BE MADE BEFORE THE GOODS BECOME ARTICLES OF COMMERCE.

But it is urged that this cannot be an inspection fee because the law does not require inspection in the first intance, and for the further reason that the fee does not bear any real relation to the inspection made and is excessive. On the first point, counsel's confusion arises no doubt from a study of the earlier cases which involved the validity of original inspection laws which relate almost wholly to the exportation of foreign commerce.

Mr. Justice Bradley, in the case of *Neilson vs. Garza,* 2 Woods, 287, speaking for the court, said:

> No doubt the primary and most usual object of inspection is to prepare goods for exportation in order to preserve the credit of our exports in foreign markets.

To the same effect see the statements of Justice Sutherland in *Clintsman vs. Northrup,* 8 Cowen, 46.

The second division of section 10, article 1 of the constitution provides:

> No state shall, without the consent of the congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the congress.

The words "imports" and "exports," as therein used, have been held to apply only to articles imported from or exported to foreign countries.

> *Woodruff vs. Parham,* 8 Wall., 123;
> *Pittsburg and Southern Coal Co. vs. Louisiana,* 156 U. S., 590; 600;
> *Patapsco Guano Company vs. North Carolina,* 171 U. S., 350.

Inspection laws, in so far as they relate to the exportation of foreign commerce, must act upon the subject *before* it becomes an article of commerce, and it was with reference to foreign commerce that the observation of Chief Justice Marshall, in the case of *Ogden vs. Gibbons,* 9 Wheat., 1, cited by complainant, was made.

It may, however, be well at this time to advert to the fact that in the *Ogden vs. Gibbons* case, the question of inspection was in no wise under consideration, and that what was said by the Chief Justice was pure dictum used only by way of argument.

It was said however by Justice Bradley in the case of *Neilson vs. Garza, supra*: "The scope of inspection laws

is very large, and is not confined to articles of domestic produce or manufacture, or to articles intended for exportation, but applies to articles imported, and to those intended for domestic use as well."

As late as 1897, in the *Patapsco vs. North Carolina* case, it was strongly urged that inspection laws did not apply to importations but only to exportations. Chief Justice Fuller stated the contention thus:

> Considered as an inspection law and as not open to attack as in contravention of that clause, the questions still remain whether an inspection law can operate on importations as well as exportations; and whether in this instance the charge was so excessive as to deprive the act of its character as an inspection law or as a legitimate exercise of protective governmental power, and make it a mere revenue law obnoxious to the objection of being an unlawful interference with interstate commerce.

It was, however, in that case definitely settled that inspection laws may operate as well on importations as exportations, and that the same principle which is exercised by the states pursuant to section 10 of article 1 of the constitution with reference to inspection of foreign commerce, may be exercised by the states under the police power of the states with reference to inspection of interstate commerce; and it is therein definitely recognized that inspection laws passed pursuant to the police powers, do not act on the subject before it becomes an article of commerce when the articles transported are interstate commerce and not foreign commerce.

On page 357, the court said:

> Whenever inspection laws act on the subject before it becomes an article of commerce they are confessedly valid, *and also when, although operating on articles brought from one state into another, they provide for inspection in the exercise of that power of self-protection commonly called the police power.* No doubt can be entertained of this where the inspection is manifestly intended, and calculated in good faith, to protect the public health, the public morals, or the public safety. And it has now been determined that this is so, if the object of the inspection is the prevention of imposition on the public generally. * * * Where the subject is of wide importance to the community, the consequences of fraudulent practices generally injurious, and the suppression of such frauds matter of public concern, it is within the protective power of the state to intervene. Laws providing for the inspection and grading of flour, the inspection and regulation of weights and measures, the weighing of coal on public scales, and the like, are all competent exercises of that power, and it is not perceived why the prevention of deception in the adulteration of fertilizers does not fall within its scope.
>
> *Patapsco Guano Co. vs. North Carolina*, 171 U. S. 358.

It was also urged in that case that the fees collected were applied to other sources than inspection; that the fees collected were greatly in excess of the actual cost of inspection; that the fees of the inspector were paid out of the fund of the department of agriculture and that the act was simply a revenue measure and in no proper sense

(Italics are ours.)

an inspection law. The court, however, with reference to the fees said that "if the receipts are found to average largely more than enough to pay the expenses, the presumption would be that the legislature would moderate the charge." The court also considered such expenses as the cost of analysis, the cost of tags, express charges, miscellaneous expenses of the department, and other items of expense of a similar nature.

The provision with reference to the furnishing of tags, the same to contain a statement of the ingredients of the article in question for analysis to be made from time to time, is substantially the same in the Iowa law as in the law of North Carolina, the validity of which was assailed in the foregoing case.

The doctrine announced in the case of *Patapsco Guano Company vs. North Carolina, supra,* with reference to the nature and the amount of the fee was reaffirmed and reannounced in the case of *McLean vs. Denver & R. G. R. R. Co.,* 203 U. S., 55, in which the court there said:

> The law being otherwise valid, the amount of the inspection fee is not a judicial question. It rests with the legislature to fix the amount and it can only present a valid objection when it is shown that it is so unreasonable and disproportionate to the services rendered as to attack the good faith of the law.

Furthermore, the appellant is in no position to complain of the excessiveness of the fee for the reason that in its complaint it alleges that its business exceeds the value

of two thousand dollars; (page 1 Transcript of Record) and further, that it has over eight hundred dealers doing business in the state of Iowa besides a very large number of customers who buy direct from complainant or through its agents. And further, that complainant "has been enabled to sell in the state of Iowa during the past year and for a number of years preceding a quantity of its goods in the amount of exceeding forty thousand dollars per annum." (Page 2 Transcript of Record).

From the complainant's own showing a fee prescribed upon each package would result in exacting a larger charge from the appellant than the fee as it is now prescribed.

Conceding for the purpose of argument that the act discriminates against the manufacturer doing a small amount of business in the state who is required to pay a fee equal to that done by the large manufacturer doing a large business, as complainant herein, this objection to the statute cannot be raised by the appellant for the reason that it is to his advantage and not disadvantage.

In the case of *Turpin vs. Lemon*, 187 U. S., page 51, at pages 60 and 61, this court said:

> This is an effort to test the constitutionality of the law without showing that the plaintiff had been injured by its application, and in this particular the case falls within our ruling in *Tyler vs. Judges of Registration*, 179 U. S., 405, wherein we held that the plaintiff was bound to show he had personally suf-

fered an injury before he could institute a bill for relief. In short, the case made by the plaintiff is purely academic.

In *Hooker vs. Burr,* 194 U. S., 415 at 419, this court said:

> We have lately held (therein following a long line of authorities) that a party insisting upon the invalidity of a statute, as violating any constitutional provisions, must show that he may be injured by the unconstitutional law before the courts will listen to his complaint. (Citing cases.) If, instead of showing any injury, the plaintiff shows that he cannot possibly be injured, he cannot of course ask the interference of the court.

In the case of *Southern Railway Company vs. King,* 217 U. S., page 524 at 534, this court said:

> It is the settled law of this court that one who would strike down a state statute as violative of the federal constitution must bring himself by proper averments and showing within the class as to whom the act thus attacked is unconstitutional. He must show that the alleged unconstitutional feature of the law injures him, and so operates as to deprive him of rights protected by the federal constitution.

And in the late case of *Collins vs. Texas,* 223 U. S., 281, at page 295, this court said:

> On these facts we are of opinion that the plaintiff in error fails to show that the statute inflicts any wrong upon him contrary to the fourteenth amendment of the constitution of the United States.

> If he has not suffered we are not called upon to speculate upon other cases, or to decide whether the followers of Christian Science or other people might in some event have cause to complain.

And in *Quong-Wing vs. Kirkendall,* 223 U. S., page 59, the same principle is recognized, the court there adding:

> Laws frequently are enforced which the court recognizes as possibly or probably invalid if attacked by a different interest or in a different way. * * * We must conclude that so far as the present case is concerned the judgment must be affirmed.

In the case of *People vs. Olson,* 215 Ill., 620, on page 623, the supreme court said that the burden of the complainant in that case would be lessened and not increased; therefore, that "he has no standing to ask the courts to determine the constitutionality of the act of 1901 as a mere abstract question of law."

THE FACT THAT EACH AND EVERY PACKAGE IS NOT INSPECTED WILL NOT INVALIDATE THE ACT.

It is urged by complainant that each and every package is not inspected and by inference it is stated that the law is therefore invalid. In support of this proposition the case of *Pabst Brewing Company vs. Crenshaw,* 198 U. S., 17, and the case of *Vance vs. Vandercook,* 170 U. S., 438, is cited, but in the former case the result of the suit turned upon a different proposition and the minority

opinion taken at its full face value does not militate against the position taken by the state in this case.

We do not claim that the mere affidavit made by manufacturers, with nothing further required upon the part of any one, could constitute an inspection as required by the legislature of Missouri; nor the furnishing of a sample by the manufacturers as required by the legislature of South Carolina as disclosed in the case of *Vance vs. Vandercook.*

It was held in *Frazier vs. Warfield,* 13 Md., 279, that an inspection law was not invalid by reason of the fact that only one bushel out of every sixty was weighed and inspected, and that it was not necessary to inspect every bushel of the wheat.

The supreme court of Missouri in the case of *State vs. Bixman,* 162 Mo., 34, held that it was not necessary that each article should be inspected in order to make the law valid. The court said:

> Granting that it must be done (inspected) after bottled and put in the cases, still it does not require each bottle and keg or barrel to be opened, but the inspector may take a sample from the various cases at random, and test it, and, as the brewer cannot know beforehand what bottle he will open, the danger of deception or fraud will be reduced to the merest possibility. As well might we say that an inspector of wheat or corn is required to handle and see each grain. No such minute inspection is contemplated in inspecting grain, and there is less danger of imposition in inspecting beer, as we have suggested. *The efficacy of such an inspection rests to a*

great extent upon the very uncertainty of the bottle which the inspector may select in making his test.

The identical principle will apply to the case at bar. The fact that the state food and dairy commissioner must make an inspection and analysis from time to time, to publish his result; the further fact that the person whose goods are inspected cannot know what particular goods will be inspected, or at what particular time the inspection will be made, coupled with the fact that all articles sold must contain a label showing the specific ingredients, and that if the same are found to be false, the person offending is subject to criminal prosecution, reduces the danger of deception or fraud, as said by the supreme court of Missouri, "to the merest possibility." It would to a large extent render inspection laws impossible with reference to food products, to require an actual inspection of each and every article, nor can any good reason be shown for so doing. But it is argued that in the practical operation of the act, some discrimination between different shippers might follow.

The question of discrimination was strongly urged in the case of *McLean vs. Denver & R. G. R. R. Co., Supra,* but it was there held that this could not invalidate the law inasmuch as there was some reason for the discrimination. It was also strongly urged in the McLean case that the act affected interstate commerce and the same contention was made there that is made in the case at bar, viz: that the amount exacted by the state was not an inspection fee, but a tax and a burden upon interstate commerce. To this objection the court said:

> It is true it affects interstate commerce, but we do not think such was its primary purpose, *and while it may have an effect to levy a tax upon this class of property, the main purpose evidently was to protect the people against fraud and wrong.*

So it may be said in the instant case, the law results in requiring persons doing both state and interstate business to pay a fee of one hundred dollars per year, but the primary object of the fee is not to levy a tax upon commerce, state or interstate, but, as before stated, to protect the people against fraud and wrong, and furnish a method of preventing dealers in condimental stock foods from palming off on an unsuspecting and credulous public, an article with little or no medicinal value and charge therefor fabulous prices.

In the case brought in the circuit court of the United States for the District of South Dakota, Northern Division, entitled *Marion W. Savage, Trading as International Stock Food Company, vs. A. H. Wheaton, Food and Dairy Commissioner of the State of South Dakota,* assailing the constitutionality of the law of South Dakota upon substantially the same grounds as in the case at bar, complainant there claimed that his particular remedies and stock foods contained great nutritive and medicinal values, but the analysis of the chemist showed that ordinary bran contained much more nutriment that the stock food in question. It was also shown that a great part of the food consisted principally of screenings purchased at a very low cost, and the percentage of medicinal properties was so small as to be almost valueless. The case is im-

portant as showing the necessity for legislation of this kind. It was heard before District Judge Carland, but does not seem to be officially reported. The opinion, however, is found in American Food Journal published in Chicago, November 15, 1907, commencing on page 26, the decision of the court being on page 29.

IS THE LAW INVALID BECAUSE OF THE FACT THAT THE FEE IS PRESCRIBED IN A LUMP SUM?

We do not see how this adds any new principle if the fee is not so excessive and is not levied under such circumstances as to disclose on its face that the act in question is a mere revenue measure and not a valid police regulation. The fee must be paid by the person who either sells or purchases the same and no matter in what form it is levied, it must be paid by an individual. A fee levied against the property itself could be quite as excessive as the fee levied in a lump sum, but whether levied directly from the person to pay for inspection or whether levied upon the property itself, the result is the same, viz: the payment must be made by either the seller or buyer, and the result is identical; and this court has many times held it is the ultimate result of the act which is to govern regardless of its phraseology.

The statement in the act that the fee is in lieu of an inspection fee simply means that if the one hundred dollar fee is paid, no other fee is to be expected or required.

In *State of Tennessee vs. Bank of Commerce*, 53 Fed. Rep., 735, Hammond, Justice, said:

> The ordinary use of the phrase, "in lieu of all other taxes," as distinguished from any technicalities whatsoever, always imparts that none other than the tax specified, however described, can be demanded.

The position taken by the state under this division, viz: that it is the ultimate result which is to govern, that in the final analysis the fee must be paid by some person or corporation, and necessarily by either the seller or the purchaser, and therefore the form of the imposition of the fee should not in and of itself invalidate an act is exactly the position taken by the supreme court of Ohio in the case of *Cincinnati Gas Light and Coke Company vs. The State,* 18 Ohio State Rep., page 245. It was there urged that the law then under consideration which provided that the inspection fees should be assessed and charged against gas companies respectively, according to the amount of capital by each of them invested in the business in which they are engaged, was unconstitutional. The court said:

> The inspection of the quality of gas, and the testing of the instrumentalities for its measurement, are peculiar; and it may well be that no method of providing a fair compensation for the services of the inspector could be afforded by fees imposed for particular things done or acts performed. In respect to this matter, a large discretion must, of necessity, be left to the legislative power of the government. The presumption is that the legislature, in the exercise of its discretion, regarded the method of assessment which it has adopted, as the nearest approximation to a just and equitable charge upon the dif-

> ferent companies, for the services rendered by the inspector, which the peculiar character of the duties to be performed by him would permit. In principle, there is no difference between the charge of fees for particular acts of service rendered, and the measurement of compensation here adopted. And we cannot assume to control or supervise that which is a matter of mere legislative discretion.

That this position is not an accidental decision of one court is evident from the doctrine announced by the learned author of Cyc., who states that "the manner in which inspection shall be made depends entirely upon the requirements of a statute and the nature of the merchandise." 22 Cyc., page 1366.

It was the thought of the general assembly of Iowa that the payment of a fee in a lump sum on patented, proprietary and condimental stock foods claimed to possess nutritive or medicinal properties, or both, would be much more practical and workable than a separate payment upon each package; in other words, the law was framed to meet a condition which existed and not a theory. It was so worded as to meet the exigencies of a particular situation.

This court in the case of *McClain vs. Denver & Rio Grande,* 203 U. S., page 38, said:

> Legislation is not void because it meets the exigencies of a particular situation.

And also said on pages 54 and 55:

> Certainly we cannot judicially say that there can be no valid reason for making the inspection in question apply only to hides offered for transportation beyond the territory, and that for that reason the tax is an arbitrary discrimination against interstate commerce.

And in the case of *Missouri Pacific Railway vs. Mackey*, 127 U. S., 205, this court, in sustaining the validity of a law against very insistent objections to its constitutionality, said: "It meets a particular necessity." That there is a necessity for the method of imposing the inspection fee followed by the Iowa legislature is clearly recognized by complainant in his brief; that is to say, he clearly recognizes that it is impracticable to exact the usual form of an inspection fee upon each article with reference to certain of the products of complainants. On page 18 of appellant's brief and argument he says:

> It is apparent that not every article of commerce is susceptible of inspection. There is and can be of necessity no standard by which to measure the quality of complainant's product, and how can there be an inspection of a preparation which from its very nature cannot be inspected? To inspect—that is to determine whether the article meets a state requirement, is to measure it by some standard, and the law fixes no such standard.

If, however, the purpose of the law is to protect the people of the state against the sale of fraudulent and adulterated stock foods of various kinds, and if the law is reasonably well adapted to that end, then it is apparent that the propositions announced by complainant

cannot stand, for the reason that the inspection made from time to time by expert chemists employed by the state food and dairy commissioner, coupled with the fact that the report will be published, that any individual may have special inspection, that each article must properly be labeled setting forth the diluents or bases, and considering further that any false labeling is made criminal, furnishes the very protection to the public which the legislature intended to furnish.

If the act bears a real relation to the object to be accomplished, the method of its accomplishment is for the legislature.

In the case of *Jacobson vs. Massachusetts*, 197 U. S., 11, this court said:

> The legislature, being familiar with local conditions, is primarily the judge of the necessity of such enactments.

As said by Mr. Justice Moody, speaking for the court in the case of *St. Louis & Iron Mountain Ry. vs. Taylor*, 210 U. S., 295:

> They (the courts) have no responsibility for the justice or wisdom of legislation, and no duty except to enforce the law as it is written, unless it is clearly beyond the constitutional power of the lawmaking body.

IS THE ACT INVALID BECAUSE IT REQUIRES, AMONG OTHER THINGS, A LABELING SO AS NOT TO DECEIVE THE PURCHASER, AND A SETTING FORTH OF THE PERCENTAGE OF THE DILUENT OR BASE OF THE PRODUCT?

In view of the long line of decisions of this court, commencing with the oleomargarine cases, it is difficult for the state to regard this objection with any degree of seriousness.

Complainant assures us in his argument and in his brief that the articles of his company do not contain any deleterious or poisonous substances, but concedes that if they did, then it would be proper to require them to give the percentage of the diluent or base and the various ingredients. Surely the constitutionality of an act cannot be determined upon the particular practice during a particular time of a particular company engaged in the manufacture and sale of stock food. The legislature in the passage of the act under its police power determined that there was an evil to correct; that stock food companies manufactured and sold false, fraudulent and adulterated stock foods and labeled the same so as to mislead and deceive the purchasers, and that if this practice was so common among other stock food companies as to require the passage of an act in question, there must be some information contained upon the package to the end that the purchaser may know what he is buying, and unless the percentage of the diluent or

diluents or bases is stated upon the package, there will be great opportunity for fraud and deception.

A disclosure of the diluent or diluents or bases is not a disclosure of complainant's secret formula. The deception may be the greatest in the quantity and quality of the diluents and bases, and the public would be afforded but little protection if merely the names of ingredients were required without knowing the character and quantity of the diluent or base to the end that some knowledge of the article as a whole may be obtained. It is common knowledge that the biggest quacks put forth the most extravagant representations. The public must have something more than the statement of a manufacturer if it is to have any protection.

As was said by Judge Carland in the case of *Marion W. Savage, Trading as International Stock Food Company, vs. A. H. Wheaton, Food and Dairy Commissioner:*

> When we take into consideration what is claimed by complainant for its stock food as a medicinal preparation, and at the same time take into consideration what is stated to be its evident ingredients by a chemist of high standing in his profession, it is plainly apparent that the legislature had good reason for passing the act in question in order to protect the citizens of the state against fraud and imposition. It was in the judgment of this court a valid exercise of the police power of the state, as is fully shown by the following authorities:
>
> *State vs. Snow* (Iowa), 11 L. R. A., 355;
>
> *Powell vs. Penn*, 127 U. S., 678;

Patterson vs. Kentucky, 97 U. S., 501;
Patapsco Guano Co. vs. Board of Agriculture, 171 U. S., 345;
Plumley vs. Mass., 155 U. S., 561;
Palmer vs. State (Ohio), 48 Am. Rep., 439;
State vs. Assleson (Minn.), 52 N. W., 220;
State vs. Sherod (Minn.), 83 N. W., 417.

As we view it, however, this is not an open question in this court. In the case of *Heath & Milligan Manufacturing Company vs. Worst,* 207 U. S., 338, this court directly passed upon the proposition involved in this branch of the argument in which they sustained the constitutionality of the law of North Dakota, which in the language of the court (page 355) contained the following requirements:

> First. All white lead and compounds intended for use as a substitute therefor must be labeled to clearly show the per cent of each mineral therein.
>
> Second. All mixed paints must show their true composition, unless made of pure linseed oil, carbonate of lead or oxide of zinc, turpentine, Japan dryer and pure colors.
>
> Third. All substitutes for linseed oil in the preparation of paints must be clearly shown on the label.

The court held, however, that the requirement of the statute compelling the manufacturers to disclose the

composition of their paints was not open to any of the constitutional objections urged against the statute; in other words, that the act was a valid exercise of the police power of the state.

This court in the Oleomargarine case, *Schollenberger vs. Pennsylvania*, 171 U. S., page 1, at page 12, said:

> A state has power to regulate the introduction of any article, including a food product, so as to insure purity of any article imported, but such police power does not include the total exclusion even of an article of food.

In the case of *Stilz vs. Thompson*, 44 Minn., 271, it was held that the owner of an article offered for sale, as a proper police regulation for the benefit of the public in general, may be legally required to sell it for what it actually is, and that such owner is not entitled to the benefit of any additional market value which he may secure by concealing its true character. In this case it was held that baking powder, containing alum, might be required to be so labeled.

And see also:

Patterson vs. Kentucky, 97 U. S., page 501;

Arbuckle vs. Blackburn, 113 Fed., page 616, at 627; affirmed in 191 U. S., 405.

IS THE ACT OF THE IOWA LEGISLATURE VOID BY REASON OF ITS CONFLICT WITH THE LAWS OF THE UNITED STATES ENACTED BY CONGRESS JUNE 30, 1906?

Appellant suggests that the law is unconstitutional because Congress has passed a law, the purpose of which is to prevent fraud and adulteration in food products designed for the use of both man and animal. The act in question was passed for the sole purpose of preventing fraud and adulteration in the sale of food products within the state of Iowa and only applies to concentrated commercial feeding stuffs "sold or offered for sale in the state of Iowa for use within this state." There is therefore no conflict and no incompatibility between the Iowa law and the federal law. The Iowa law is merely supplementary to the federal law and covers a field which is not covered by the act of Congress and concerning which Congress would not have the power to legislate.

In the case of *United States vs. New Bedford Bridge*, No. 15,867, 27, Fed. Cases, page 97, the court said:

> In order to consider a state law as void, because conflicting with one of the United States, it must not only affect the subject-matter, have some influence over it, but be directly incompatible or repugnant—an extreme inconvenience to it. Then must interpose, but not till then, the supremacy of the laws of the general government within its proper

sphere, prevailing over those of the states, when so using their own as to encroach on others.

In the case of *Plumley vs. Massachusetts*, 155 U. S., page 461, at 472, this court said:

> If there be any subject over which it would seem the states ought to have plenary control, and the power to legislate in respect to which it ought not to be supposed was intended to be surrendered to the general government, it is the protection of the people against fraud and deception in the sale of food products. Such legislation may, indeed, indirectly or incidentally affect trade in such products transported from one state to another state. But that circumstance does not show that laws of the character alluded to are inconsistent with the power of Congress to regulate commerce among the states.

In the case of *Crossman vs. Lurman*, 192 U. S., 189, at 198, this court quoted with approval the following language from the case of *Plumley vs. Massachusetts*:

> We are of opinion that it is within the power of a state to exclude from its markets any compound manufactured in another state, which has been artificially colored or adulterated so as to cause it to look like an article of food in general use, and the sale of which may, by reason of such coloration or adulteration, cheat the general public into purchasing that which they may not intend to buy. *The constitution of the United States does not secure to any one the privilege of defrauding the public.*

In the case of *Bowman vs. Chicago, etc., Railway Company*, 125 U. S., 465, at page 501, Mr. Justice Field in concurring opinion said:

> The state possesses the power to prescribe all such regulations with respect to the possession, use and sale of property within its limits as may be necessary to protect the health, lives and morals of its people; and that power may be applied to all kinds of property, even that which in its nature is harmless.

While we have argued separately the various propositions urged by counsel in his brief, we feel that there is but one question which is entitled to serious consideration by this court, viz: the legality of the exaction of the fee in a lump sum instead of levying a specific amount upon the particular article sold or offered for sale within the state, but we believe that a careful consideration of the whole act will disclose that the objection is not bottomed upon any sound distinction which the appellant may urge in this case.

The greatest objection to the fee in the lump sum is the fact that the man doing a small amount of business would, to some extent, be discriminated against; in other words, a fee prescribed in a lump sum, as was done by the legislature of Iowa, results in some discrimination in favor of the large manufacturer such as the complainant herein. Indeed, the plaintiff is the beneficiary of the method of prescribing this fee and, as before stated, cannot therefore object to the fee upon the ground of its discrimination.

This court in passing upon the validity of this act should bear in mind that the inspection made with reference to those articles which are sold by appellant, and

those articles in which the inspection fee is fixed by the act at ten cents per ton, is identical. That being true, if the law is a valid exercise of the police power in so far as it relates to commercial feeding stuffs in which the inspection fee is fixed at ten cents per ton, and the Patapsco case ought to definitely settle that question, then that part of the law concerning which the defendant complains is equally an inspection law because the identical results are obtained in each instance.

The proposition then resolves itself into the question as to whether an inspection fee to be valid must be prescribed in one form alone. The constitution of the United States does not so declare. The prohibition in the constitution against the states levying duties on imports or exports makes an exception in that it permits the states to levy a sufficient amount to execute its inspection laws, but does not in any manner define the particular method in which the amount may be collected, and when we turn to the leading case in passing upon this constitutional provision where an attempt was made to directly levy a tax upon imports by requiring the seller to take out a license for which he was required to pay fifty dollars, it was ingeniously urged by Mr. Taney that the law was not repugnant to the constitution because it did not levy a tax in the manner defined by the constitution, but Chief Justice Marshall clearly pointed out that regardless of the method in which the amount was to be levied whether ostensibly against a seller or against the goods themselves, that in any event it was the purchaser who ultimately paid the tax and

said that "a duty on imports is a tax on the article which is paid by the consumer" and that because the tax was ostensibly levied against the person that it could not escape the inhibition of the constitution because it was in effect against both the person and the goods.

Brown vs. Maryland, 12 Wheaton, 419.

It follows as a necessary corollary that if in that case a tax ostensibly levied against the person was a tax against the goods, the same principle would apply in the case at bar, and hence the ultimate question remains: is this court clothed with authority and jurisdiction to declare unconstitutional an act of a state legislature because it is not couched in stereotyped language, or because the court should consider that it was illogical in its arrangement? We respectfully submit that the constitution grants to this court no such authority.

For the court to strike down an act of a state upon the mere ground that it was illogical, or even unreasonable in some of its provisions, would be to exercise a veto power which was expressly denied to the court by the constitutional convention. (Elliott's Debates, Vol. 5, page 428.)

In the case of *Hylton vs. United States,* 3 Dall., 171, Mr. Justice Chase, speaking for the court, raised the question as to whether the court had the power to declare an act of congress void, and stated: "But if the court have such power I am free to declare that I will never exercise it but in a very clear case."

Chief Justice Waite in the Sinking Fund Cases, 99 U. S., 717, said: "Every possible presumption is in favor of the validity of a statute and this continues until the contrary is shown beyond a rational doubt. One branch of the government cannot encroach on the domain of another without danger. The safety of our institutions depends in no small degree on a strict observance of the salutary rule."

The language of the court in the case of *Holden vs. Hardy,* 169 U. S., 366, is especially apposite in this case. The court, after reviewing with great length and learning the various changes which had taken place in our fundamental law in order to meet changed conditions, said:

> This case does not call for an expression of opinion as to the wisdom of these changes. * * * They are mentioned only for the purpose of calling attention to the probability that other changes of no less importance may be made in the future, and that while the cardinal principles of justice are immutable, the methods by which justice is administered are subject to constant fluctuation, and that the constitution of the United States, which is necessarily and to a large extent inflexible and exceedingly difficult of amendment, should not be so construed as to deprive the states of the power to so amend their laws as to make them conform to the wishes of the citizens as they may deem best for the public welfare without bringing them into conflict with the supreme law of the land.

The court also quoted with approval the following extract from Chief Justice Shaw in *Commonwealth vs. Alger,* 7 Cush., 53:

> We think it a settled principle, growing out of the nature of well ordered civil society, that every holder of property however absolute and unqualified may be his title, holds it under the implied liability that its use may be so regulated, that it shall not be injurious to the equal enjoyment of others having an equal right to the enjoyment of their property, nor injurious to the rights of the community. All property in this commonwealth, as well that in the interior as that bordering on tide waters, is derived directly or indirectly from the government, and held subject to those general regulations, which are necessary to the common good and general welfare. Rights of property, like all other social and conventional rights, are subject to such reasonable limitations in their enjoyment, as shall prevent them from being injurious, and to such reasonable restraints and regulations established by law as the legislature, under the governing and controlling power vested in them by the constitution, may think necessary and expedient.

This is not only good law, but it is good morals and good philosophy.

John Stuart Mill in his Essay on Liberty, chapter 4, page 283, Harvard Classics, said: "As soon as any part of a person's conduct affects prejudicially the interests of others, society has jurisdiction over it."

The pertinency of the observations of Chief Justice Shaw and Mill to the case at bar consists in this that

the real objection which the defendant has to the collection of the fee is not to the form in which it is prescribed, but appellant is here for the purpose of defeating not only the imposition of any fee but also any inspection whatsoever. This is apparent from a previous observation that the method of collecting the fee advantages the appellant, and also from appellant's argument in which he states: "It is apparent that not every article of commerce is susceptible of inspection. There is and can be of necessity no standard by which to measure the quality of complainant's product, and how can there be an inspection of a preparation which from its very nature cannot be inspected?" etc.

When it is considered that the state of Iowa is peculiarly an agricultural state, that the quality and quantity of its live stock is scarcely surpassed by any state in the Union or any country in the world, and that in the absence of a law of this nature there is nothing which stands between the farmer, and the manufacturer and dealer in false and fraudulent stock foods and quack nostrums, the necessity of a law of this nature becomes apparent, and the significance of the statement made by counsel becomes obvious. Considering then the necessity of the law, considering that the law does provide for actual inspection from time to time, and a publication of the results, that the feeding stuffs in question must be labeled and that any false labeling thereof is a misdemeanor, considering that it is passed in the exercise of the police powers of the state to protect the people against fraud, considering that no effort is

made to collect any fee upon shipments made direct from a manufacturer outside the state to a consumer within the state, and that the law itself makes, it expressly apply only to such concentrated commercial feeding-stuffs as are sold or offered for sale within the state of Iowa for use within this state, can it be said with reason that the tax in question is a tax or burden upon interstate commerce rather than the collection of an inspection fee for the purpose of defraying the expenses of making analyses and enforcing the law.

The whole act discloses the fact that its relation to interstate commerce is incidental.

We therefore respectfully insist that the decision of the lower court should be affirmed; that if there is any doubt as to the constitutionality of the act, that the doubt should be resolved in the interests of the people of the state.

We cannot do better than to conclude this argument by quoting from the case of *Atkins vs. Kansas*, 191 U. S., 223. It was there urged that the statute was unconstitutional and mischievous in its tendencies. The court said:

> So, also, if it be said that a statute like the one before us is mischievous in its tendencies, the answer is that the responsibility therefor rests upon legislators, not upon the courts. No evils arising from such legislation could be more far-reaching than those that might come to our system of government if the judiciary, abandoning the sphere assigned to it by the fundamental law, should enter

the domain of legislation, and upon grounds merely of justice or reason or wisdom annul statutes that had received the sanction of the people's representatives.

Respectfully submitted,

GEORGE COSSON, *Attorney General,*
for Appellee.

HENRY E. SAMPSON, *of Counsel.*

THE facts, which involve the construction and constitutionality of the provisions in the statutes of Iowa relative to sale of feed for stock, are stated in the opinion.

Mr. F. H. Gaines, with whom *Mr. E. G. McGilton*, *Mr. Sidney W. Smith* and *Mr. A. L. Hager* were on the brief, for appellant:

The tax imposed is a license fee and therefore void as a violation of the commerce clause of the Federal Constitution. *Brown* v. *Maryland*, 12 Wheat. 419; *Robbins* v. *Shelby County*, 120 U. S. 489; *American Fertilizer Co.* v. *Board of Agriculture*, 43 Fed. Rep. 609; *Lee Co.* v. *Webster*, 190 Fed. Rep. 353.

To require a manufacturer or one importing goods into a State to pay a tax before he has the right to sell his products within the State, is a tax on interstate commerce, and such legislative enactment of a State is void. *Lyng* v. *Michigan*, 135 U. S. 161. See, also, *Leisy* v. *Hardin*, 135 U. S. 100; *McColl* v. *California*, 136 U. S. 104; *Crutcher* v. *Kentucky*, 141 U. S. 47; *Dooley* v. *United States*. 183 U. S. 151.

The Iowa statute specifically requires manufacturers, dealers, importers, etc., without the borders of the State, to pay into the state treasury $100 each year before he is permitted to sell or offer for sale his products within the State. This is so clearly an attempt to levy a tax upon interstate commerce for the privilege of doing such business within the State, that no attempt will be made to sustain it, except on the assumption that such tax is an inspection fee, and therefore valid as an exercise of the police power of the State.

The statute nowhere contemplates an inspection of complainant's products before sale, and hence the license fee cannot be sustained upon the ground that it is to cover the cost of inspection. *Gibbons* v. *Ogden*, 9 Wheat. 1; *Turner* v. *Maryland*, 107 U. S. 38.

STANDARD STOCK FOOD COMPANY *v.* WRIGHT, STATE FOOD AND DAIRY COMMISSIONER OF IOWA.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF IOWA.

No. 222. Argued April 24, 1912.—Decided June 10, 1912.

Savage v. *Jones*, *ante*, p. 501, followed to effect that it is within the police power of a State to prevent imposition upon the public and to that end to require the disclosure of ingredients of food for stock.

Where the fair import of the provisions of a state police statute is that the fees exacted are for necessary expenses of inspecting an article properly the subject of inspection, and the bill alleges no facts warranting a conclusion that the charges are unreasonable as compared with the cost, this court will not condemn the statute as an unconstitutional revenue measure.

One attacking a state statute as unconstitutional must show that he is within the class whose constitutional rights are invaded, and one admittedly doing a large business cannot be heard on the plea that the act discriminates against those doing a small business.

The Iowa statute of 1907 regulating the sale of concentrated commercial feeding stuff is not unconstitutional as depriving vendors of such stuff of their property without due process of law, or because it is a revenue measure in disguise.

The license fee imposed by the State is not an inspection fee and cannot be sustained upon that ground. It is not made so by statute, and the requirement that the manufacturer, etc., shall pay a fixed sum before he sells his goods in the State, is a charge for the privilege of selling them, and hence a license fee.

An inspection fee cannot be determined in advance by a lump sum.

Conditions of sale which a State may prescribe do not include a right to exact a fee or license for the privilege of vending articles of commerce within the State, and herein lies the difference between an inspection fee which the State has the right to exact, and a license fee which is prohibited by the Constitution. An inspection fee is exacted to cover the cost of the performance of a certain duty of state officials preceding the sale of the proposed article to the public and in order to ascertain whether or not it is meeting the requirements of the State in its sale. A license fee is imposed as a condition precedent to the sale of a product and for the privilege of permitting it.

The prohibition of the commerce clause of the Constitution is direct and positive. The State cannot tax an article of commerce except only to cover a proper inspection of such article before it becomes an article of commerce within the State. *Pabst Brew. Co.* v. *Crenshaw*, 198 U. S. 17; *Vance* v. *Vandercook*, 170 U. S. 438.

To permit a State to tax commerce to provide a fund to enforce its police laws or to punish those who disobey them would destroy in substance the prohibition of the Constitution.

A State has not the power to require the maker of any wholesome product, that contains nothing injurious whatever and is not and cannot be from its very nature an imitation of something else, to disclose not only the ingredients but the percentages of such wholesome ingredients.

Such a formula where no fraud is perpetrated, is as much

entitled to the protection of the law as the good will of a business or an ownership in land. *Mugler* v. *Kansas*, 123 U. S. 206.

The act of Congress of June 30, 1906, specifically exempts proprietors or manufacturers of proprietary food stuffs which contain no unwholesome added ingredients from disclosing their trade formula. To require such disclosure by the State is in effect to supersede and annul the act of Congress.

The act of the Iowa legislature in so far as it sought to compel complainant to pay a tax of one hundred dollars for the privilege of doing business in the State, and to set forth upon the outside of the package or container of its product the percentage or percentages of the diluent or base, is void.

Mr. George Cosson, Attorney General of the State of Iowa, with whom *Mr. Henry E. Sampson* was on the brief, for appellee:

The validity of the act must be determined not by the casual use of any word or phrase, but by its necessary and obvious result, and the purpose for which it was framed. *Henderson* v. *New York*, 92 U. S. 259; *Minnesota* v. *Barber*, 136 U. S. 319.

The requirements of the act are not for the mere purpose of raising revenue or placing a burden upon the business of dealers in commercial feeding stuffs. There is hardly a section in the entire act which does not contain some provision looking to the protection of the public against fraud and deception.

One of the objects of inspection, so far as it applies to domestic sales, is to protect the community from fraud and imposition. *Clintsman* v. *Northrup*, 8 Cow. 46.

Elements of inspection include quality of the article, form, capacity, dimensions, weight of package, the mode of putting up, marking and branding of various kinds; but

it is not necessary for all these elements to coexist to make a valid inspection law. *Turner* v. *Maryland*, 107 U. S. 38. And see *McLean* v. *Denver*, 203 U. S. 38.

Inspection need not be made before the goods become articles of commerce. *Neilson* v. *Garza*, 2 Woods, 287; *Clintsman* v. *Northrup*, 8 Cow. 46, do not apply.

The words "imports" and "exports" as used in Art. I, § 10 of the Constitution, have been held to apply only to articles imported from or exported to foreign countries. *Woodruff* v. *Parham*, 8 Wall. 123; *Pittsburg &c. Coal Co.* v. *Louisiana*, 156 U. S. 590, 600; *Patapsco Guano Co.* v. *North Carolina*, 171 U. S. 350.

The scope of inspection laws is very large and is not confined to articles of domestic produce or manufacture, or to articles intended for exportation, but applies to articles imported and to those intended for domestic use as well. *Neilson* v. *Garza*, *supra*.

Inspection laws may operate as well on importations as exportations. *Patapsco Guano Co.* v. *North Carolina*, *supra*.

Where the receipts from inspection fees are found to average largely more than enough to pay the expenses, the presumption is that the legislature will moderate the charge. *Patapsco Guano Co.* v. *North Carolina*, *supra*; *McLean* v. *Denver & R. G. R. R. Co.*, 203 U. S. 55.

Even though the act may discriminate against the manufacturer doing a small amount of business in the State who is required to pay a fee equal to that done by the large manufacturer doing a large business, as complainant herein, this objection to the statute cannot be raised by the appellant for the reason that it is to his advantage and not disadvantage. *Turpin* v. *Lemon*, 187 U. S. 51; *Hooker* v. *Burr*, 194 U. S. 415, 419; *Southern Ry. Co.* v. *King*, 217 U. S. 524, 534; *Collins* v. *Texas*, 223 U. S. 281, 295; *Quong Wing* v. *Kirkendall*, 223 U. S. 59; *People* v. *Olson*, 215 Illinois, 620, 623.

The fact that each and every package is not inspected will not invalidate the act. *Pabst Brewing Co.* v. *Crenshaw*, 198 U. S. 17, and *Vance* v. *Vandercook*, 170 U. S. 438, distinguished; and see *Frazier* v. *Warfield*, 13 Maryland, 279; *State* v. *Bixman*, 162 Missouri, 34.

The law is not invalid because the fee is prescribed in a lump sum. *Tennessee* v. *Bank of Commerce*, 53 Fed. Rep. 735.

It is the ultimate result which is to govern, that in the final analysis the fee must be paid by some person or corporation, and necessarily by either the seller or the purchaser, and therefore the form of the imposition of the fee should not in and of itself invalidate an act. *Cinn. Gas Light Co.* v. *State*, 18 Oh. St. 245; 22 Cyc. 1366.

The law was framed to meet a condition which existed and not a theory. It was so worded as to meet the exigencies of a particular situation, and is not void because thereof. *McClain* v. *Denver & R. G. R. R. Co.*, 203 U. S. 38; *Missouri Pac. Ry.* v. *Mackey*, 127 U. S. 205.

If the act bears a real relation to the object to be accomplished, the method of its accomplishment is for the legislature. *Jacobson* v. *Massachusetts*, 197 U. S. 11; *St. Louis & I. M. Ry.* v. *Taylor*, 210 U. S. 295.

The act is not invalid because it requires, among other things, a labeling so as not to deceive the purchaser, and a setting forth of the percentage of the diluent or base of the product.

The constitutionality of an act cannot be determined upon the particular practice during a particular time of a particular company engaged in the manufacture and sale of stock food. The legislature in the passage of the act under its police power determined that there was an evil to correct; that stock food companies manufactured and sold false, fraudulent and adulterated stock foods and labeled the same so as to mislead and deceive the purchasers, and that if this practice was so common among

other stock food companies as to require the passage of an act in question, there must be some information contained upon the package to the end that the purchaser may know what he is buying, and unless the percentage of the diluent or diluents or bases is stated upon the package, there will be great opportunity for fraud and deception. *Heath & Milligan* v. *Worst*, 207 U. S. 338; *Schollenberger* v. *Pennsylvania*, 171 U. S. 1, 12; *Stilz* v. *Thompson*, 44 Minnesota, 271. And see also: *Patterson* v. *Kentucky*, 97 U. S. 501; *Arbuckle* v. *Blackburn*, 113 Fed. Rep. 616, 627, affirmed, 191 U. S. 405.

The act is not void by reason of its conflict with the law of the United States enacted by Congress June 30, 1906. It is merely supplementary to the Federal law and covers a field which is not covered by the act of Congress and concerning which Congress would not have the power to legislate. *United States* v. *New Bedford Bridge*, 27 Fed. Cas. 97, No. 15,867; *Plumley* v. *Massachusetts*, 155 U. S. 461, 472; *Crossman* v. *Lurman*, 192 U. S. 189, 198; *Bowman* v. *Chicago &c. Ry. Co.*, 125 U. S. 465, 501.

The Constitution of the United States does not declare that an inspection fee to be valid must be prescribed in one form alone. It permits the States to levy a sufficient amount to execute its inspection laws, but does not define the method in which the amount may be collected. *Brown* v. *Maryland*, 12 Wheat. 419.

This court is not clothed with authority and jurisdiction to declare unconstitutional an act of a state legislature because it is not couched in stereotyped language, or because the court might consider that it was illogical in its arrangement. 5 Elliott's Debates, 428; *Hylton* v. *United States*, 3 Dall. 171; *Sinking Fund Cases*, 99 U. S. 717; *Holden* v. *Hardy*, 169 U. S. 366; *Commonwealth* v. *Alger*, 7 Cush. 53.

The whole act discloses the fact that its relation to interstate commerce is incidental.

If there is any doubt as to the constitutionality of the act, that doubt should be resolved in the interests of the people of the State. *Atkins* v. *Kansas*, 191 U. S. 223.

MR. JUSTICE HUGHES delivered the opinion of the court.

The Standard Stock Food Company, a Nebraska corporation, brought this suit against the State Food and Dairy Commissioner of Iowa to restrain the enforcement of a statute of Iowa effective July 4, 1907 (Code of Iowa, Supplement 1907, §§ 5077-a6–5077-a24), relating to the sale within the State of "concentrated commercial feeding stuffs," upon the ground that it was repugnant to the interstate commerce clause (§ 8, Art. I), and to the Fourteenth Amendment, of the Constitution of the United States. Demurrer to the bill was sustained by the Circuit Court and the complainant appeals.

It was alleged in the bill that the appellant's product was a "condimental stock food," sold in Iowa and other States under the trade-name of "Standard Stock Food;" that it was prepared pursuant to a secret formula of great value, contained nothing deleterious or poisonous, and had "condimental and tonic properties and powers which aid animals in the digestion of food." It was further alleged that it was made in Nebraska and shipped into Iowa, where it was sold in the original packages either by agents of the appellant or by dealers.

The act required that each package of the described articles should have affixed thereto in a conspicuous place on the outside, a printed statement giving certain information. The substance of this requirement, with respect to its products, is thus stated in the appellant's argument:

"The package or container of such products shall have printed on the outside thereof:

"First. The number of net pounds of feeding stuffs in the package.

"Second. The name, brand or trade-mark under which the article is sold.

"Third. The name and address of the manufacturer, importer, dealer or agent.

"Fourth. The place of manufacture.

"Fifth. The name and percentage of any deleterious or poisonous ingredient or ingredients.

"Sixth. The name and percentage of the diluent or diluents or bases" (§§ 1, 2).

The statute also contains the following provision (G. A., c. 189, § 5):

"Before any manufacturer, importer, dealer or agent shall offer or expose for sale in this state any of the concentrated commercial feeding-stuffs defined in section three (3) of this act, he shall pay to the state food and dairy commissioner an inspection fee of ten cents per ton for each ton of such concentrated commercial feeding-stuffs sold or offered for sale in the state of Iowa for use within this state; except that every manufacturer, importer, dealer or agent for any condimental, patented, proprietary or trademarked stock or poultry foods, or both, shall pay to the state food and dairy commissioner, on or before the fifteenth day of July of each year, a license fee of one hundred dollars ($100.00) in lieu of such inspection fee. Whenever the manufacturer or importer of such foods shall have paid the fee herein required, no other person or agent of such manufacturer or importer shall be required to pay such license fee."

The appellant challenges the constitutional validity of the statute in these two particulars: (1) The requirement that the name and percentage of the diluent or diluents or bases shall be stated, and (2) the exaction of the fee of one hundred dollars.

1. With respect to the first question the case in its essential features is not to be distinguished from that of *Savage* v. *Jones*, decided June 7, 1912, *ante*, p. 501, and

nothing need be added to what was there said. It was competent for the State, in the exercise of its power to prevent imposition upon the public, to require the disclosure to which objection is made. The provision was not an unreasonable one and the effect upon interstate commerce was incidental only. *Plumley* v. *Massachusetts*, 155 U. S. 461; *Hennington* v. *Georgia*, 163 U. S. 299, 317; *Missouri, Kansas & Texas Ry. Co.* v. *Haber*, 169 U. S. 613; *Patapsco Guano Co.* v. *North Carolina*, 171 U. S. 345, 361; *McLean* v. *Denver & Rio Grande R. R. Co.*, 203 U. S. 38, 50; *Heath & Milligan Manufacturing Co.* v. *Worst*, 207 U. S. 338; *Asbell* v. *Kansas*, 209 U. S. 251, 254, 256. Nor is there any conflict with the Food and Drugs Act of June 30, 1906, c. 3915, 34 Stat. 768; *Savage* v. *Jones*, *supra*.

2. The statute provides for inspection and analysis. Under § 6, it is the duty of the State Food and Dairy Commissioner to "cause to be made analyses of all concentrated commercial feeding-stuffs and agricultural seeds sold or offered for sale in this State." For this purpose, that officer is authorized "in person or by deputy, to take for analysis a sample from any lot or package of concentrated commercial feeding-stuffs in this State," and further provision is made to assure the representative character of the sample. The results of the analyses are to be published from time to time in official bulletins. The State Food and Dairy Commissioner is required to enforce the statute and to this end is authorized to appoint, with the approval of the executive council, such analysts and chemists as may be necessary to carry it into effect. Violation of any of the provisions of the act is made a misdemeanor.

We are of opinion that the statute must be considered as an inspection law which it was within the power of the State to enact, and that its fair import is that the fees exacted by § 5 above quoted are for the purpose of meeting the expense of inspection. The bill alleges no facts

warranting the conclusion that the charge is unreasonable as compared with this expense. *Patapsco Guano Co.* v. *North Carolina*, 171 U. S. 345, 347, 354, 361; *McLean* v. *Denver & Rio Grande R. R. Co.*, 203 U. S. 38, 50; *Red "C" Oil Co.* v. *North Carolina*, 222 U. S. 380, 393; *Savage* v. *Jones, supra.*

The payment of the sum of one hundred dollars in the case of "condimental, patented, proprietary or trade-marked stock or poultry foods" was required in lieu of the inspection charge of ten cents a ton, and was in effect a commutation of that charge. The essential character of the exaction was not altered. If it be said that this provision discriminates against one doing a small business, still the appellant wholly fails to show that it is thereby injured and thus entitled to complain. On the contrary, the bill alleges that the appellant "sells to more than eight hundred dealers in the State of Iowa, besides a very large number of customers who buy direct from your orator or through its agents," and that it "has been enabled to sell in the State of Iowa during the past year and for a number of years preceding a quantity of its goods in an amount exceeding $40,000 per annum."

The case in this aspect falls within the established rule that "one who would strike down a state statute as violative of the Federal Constitution must bring himself by proper averments and showing within the class as to whom the act thus attacked is unconstitutional. He must show that the alleged unconstitutional feature of the law injures him, and so operates as to deprive him of rights protected by the Federal Constitution." *Southern Ry. Co.* v. *King*, 217 U. S. 524, 534. See also *Tyler* v. *The Judges*, 179 U. S. 405; *Turpin* v. *Lemon*, 187 U. S. 51, 60; *Hooker* v. *Burr*, 194 U. S. 415; *Hatch* v. *Reardon*, 204 U. S. 152, 160; *Collins* v. *Texas*, 223 U. S. 288, 295.

The Circuit Court was right in sustaining the demurrer.

Affirmed.